No. 85-10

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In The

Supreme Court of the United States

October Term, 1984

THE PRESBYTERY OF BEAVER-BUTLER OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, *et al.*,

Petitioners,

vs.

MIDDLESEX PRESBYTERIAN CHURCH, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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QUESTION PRESENTED

Does the First Amendment, as interpreted by this Court in *Jones v. Wolf,* 443 U.S. 595 (1979); *Serbian Eastern Orthodox Diocese v. Milivojevich,* 426 U.S. 696 (1976); *Kreshik v. Saint Nicholas Cathedral,* 363 U.S. 190 (1960); and *Kedroff v. Saint Nicholas Cathedral,* 344 U.S. 94 (1952), require a civil court to give recognition to the provisions of the constitution of a hierarchical church as to the identity of the governing body of a local church and to the action and decision of a judicatory of the church taken pursuant to those provisions, and prevent a civil court from substituting its judgment for the provisions of the constitution of the church and for the action of a church judicatory taken thereunder to replace the governing body of a local church?

PARTIES TO THE PROCEEDING

Petitioners herein are The Presbytery of Beaver-Butler of the United Presbyterian Church in the United States of America, an unincorporated judicatory of the denomination now known as Presbyterian Church (U.S.A.), which prior to a 1983 merger was known as The United Presbyterian Church in the United States of America; the unincorporated administrative commission appointed by the Presbytery of Beaver-Butler, consisting of six individuals, James K. Donnell, Richard Anderson, William Liebler, David Johnston, Ray Earlin, and Bernice Williams; Middlesex United Presbyterian Church, an unincorporated local church; The Beaver-Butler Presbytery, a nonprofit corporation; and Middlesex Presbyterian Church, a nonprofit corporation which respondents have contended in this litigation should have been a defendant (rather than a plaintiff) in the trial court and a respondent (rather than a petitioner) herein. Respondents herein are Middlesex Presbyterian Church, an unincorporated religious congregation which respondents have contended in this litigation exists only as a nonprofit corporation and not as an unincorporated congregation; Earl F. Fair, an individual who is a former pastor of Middlesex United Presbyterian Church; eleven individuals, Wencil Smith, Donald Barr, William Duncan, Elton Anderson, Mae Stepp, Wilbert Mowry, Jr., David Santori, Earl Kennedy, George Hendrickson, Wilbert Powell, and David Carney, members of the session of Middlesex United Presbyterian Church who were replaced by the Presbytery of Beaver-Butler; four individuals, Frank Halstead, Charles Fleming, Gary Welsh, and Jeffrey Anderson, who are former trustees of Middlesex United Presbyterian Church; and Harry Falls, an individual who has been the Chairman of the nonprofit corporation known as Middlesex Presbyterian Church. None of the nonprofit corporations listed above has a parent company or any subsidiaries or affiliates.

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No.

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THE PRESBYTERY OF BEAVER-BUTLER OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, *et al.*,

Petitioners,

vs.

MIDDLESEX PRESBYTERIAN CHURCH, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

The Presbytery of Beaver-Butler of the United Presbyterian Church in the United States of America, *et al.*, respectfully petition for a writ of certiorari to review the judgment of the Supreme Court of Pennsylvania in the above-entitled case.

OPINIONS BELOW

The opinion of the Supreme Court of Pennsylvania (App. 1a) is reported at 489 A.2d 1317. The opinion of the

Commonwealth Court of Pennsylvania (App. 18a) is reported at 80 Pa. Commw. 211 and 471 A.2d 1271. The opinion of the Court of Common Pleas of Butler County, Pennsylvania (App. 40a) is not reported.

JURISDICTION

The judgment of the Supreme Court of Pennsylvania was entered on April 3, 1985. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const., Amend. I:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . .

U.S. Const., Amend. XIV, Sec. 1:

> . . .nor shall any State deprive any person of life, liberty, or property, without due process of law . . . .

STATEMENT OF THE CASE

In this petition The Presbytery of Beaver-Butler of the United Presbyterian Church in the United States of America ("the Presbytery of Beaver-Butler" or "the Presbytery") and others seek review of a decision in which the Supreme Court of Pennsylvania refused to acknowledge and to give effect to the action of the Presbytery of Beaver-Butler in replacing the session of a local church with an administrative commission with exclusive authority over the use of the property used by the local group.

Although the Presbytery's action was taken pursuant to the express provisions of the constitution of The United Presbyterian Church in the United States of America ("the United Presbyterian Church") and reflected the Presbytery's determination, as a superior judicatory of the denomination, that the session being replaced had violated church law, the Supreme Court of Pennsylvania in effect overruled the Presbytery and reinstated the session replaced by the Presbytery by holding that the respondents herein are entitled to possession and use of the property. The decision of the Supreme Court of Pennsylvania thereby violates the First and Fourteenth Amendments to the Constitution of the United States and is contrary to the decisions of this Court in *Serbian Eastern Orthodox Diocese v. Milivojevich,* 426 U.S. 696 (1976); *Kreshik v. Saint Nicholas Cathedral,* 363 U.S. 190 (1960); and *Jones v. Wolf,* 443 U.S. 595 (1979).

This action arises out of an attempt by some of the members of Middlesex United Presbyterian Church to withdraw the church from the United Presbyterian Church without the permission of the denomination and to take with them the local church property. Middlesex United Presbyterian Church has been a particular (local) church of the United Presbyterian Church since 1799. On April 6, 1981, 125 of the 271 members of the congregation voted in favor of a resolution that purported to withdraw the particular church from the denomination. Thirty-one members voted against the motion. The individuals who voted to withdraw joined another denomination and continue to occupy the church property, including the church edifice and manse, leaving those members who did not vote to withdraw, and who continue to worship together as a particular church of the United Presbyterian Church, without a church building in which to worship.

The presbyterian form of church government is characterized by ascending levels of judicatories (tribunals), in which a presbytery composed of both clergy and laymen performs the functions of

a bishop. The lowest judicatory is the session of each particular church, which is composed of the ministers and ruling elders (laymen who are ordained to the position of elder) of the particular church. Each particular church is under the jurisdiction of the next higher judicatory, a presbytery composed of ministers and elders representing all the particular churches in a certain geographical area. Presbyteries are grouped under the jurisdiction of a "synod," the next higher judicatory. The highest judicatory is the General Assembly of the United Presbyterian Church, which is composed of representatives elected by each presbytery. The constitution of the United Presbyterian Church, a two-volume written document that is contained in the record in this action, specifies that actions of lower judicatories are subject to review and to correction by higher judicatories, and that appeals may be taken from lower judicatories to judicial commissions appointed by higher judicatories, which sit as church courts. It is this ascending order of judicatories that has consistently caused the form of government of the United Presbyterian Church to be recognized as "hierarchical" by this Court and by many state courts.

The presbytery is the basic unit of church government in the United Presbyterian Church. The constitution of the United Presbyterian Church expressly provides that presbyteries have the powers, *inter alia,* to form new churches; to dissolve, divide, or unite churches; and to review and approve, or require the correction of, the records of church sessions. Every particular church must be organized, *i.e.*, created, by a presbytery. Written permission of a presbytery must be obtained before a particular church sells or encumbers real property, acquires real property subject to a condition, leases real property used for worship, or leases for more than five years any other real property. Each presbytery has express power to dispose of the property of churches it dissolves.

Moreover, and of particular importance in the instant case, each presbytery has express power to appoint an administrative commission with the full powers of a session to replace the session of a particular church whenever the presbytery determines, after notice and a hearing, that the session of that particular church "is unable or unwilling to manage wisely the affairs of its church." The constitution of the United Presbyterian Church states that the powers of a session (and therefore the powers of any administrative commission appointed by a presbytery to replace a session) include exclusive authority over local church buildings and property, subject to the authority of higher judicatories. In addition to these and other specific powers, each presbytery has general power to "take effectual care that [sessions of particular churches] observe the Constitution of the Church."

Pursuant to its express constitutional powers, the Presbytery of Beaver-Butler on April 27, 1981, replaced the session of Middlesex United Presbyterian Church with an administrative commission with full powers of a session, which powers include authority over the property used by the local church. This action reflected the decision of the Presbytery as a judicatory of a hierarchical denomination, after the required notice and hearing, that the vote to withdraw violated church law[1] and that therefore the session of Middlesex United Presbyterian Church was "unable or unwilling to manage wisely the affairs of its church." Respondents did not appeal the Presbytery's action to the Synod or to the General Assembly. By holding that the respondents are entitled to exclusive possession and control of the property at

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1. Individuals may of course terminate their memberships in the United Presbyterian Church at any time. The General Assembly and the lower judicatories repeatedly have ruled that under church law members of a particular church cannot unilaterally withdraw from the denomination the particular church, which exists as a particular church of the United Presbyterian Church only by virtue of its having been organized by a presbytery.

issue, the Supreme Court of Pennsylvania in effect reinstated the session replaced by the Presbytery.

On July 23, 1981 petitioners filed a Complaint in Equity in the Court of Common Pleas of Butler County, Pennsylvania, requesting an order requiring respondents to refrain from interfering with the activities of the Presbytery of Beaver-Butler in operating a continuing United Presbyterian Church at the Middlesex location and to make an accounting of all funds. The Court of Common Pleas of Butler County subsequently entered summary judgment for respondents, and the Presbytery appealed to the Commonwealth Court of Pennsylvania. A unanimous panel of the Commonwealth Court reversed the Court of Common Pleas and directed that summary judgment be entered for the Presbytery. The Supreme Court of Pennsylvania granted respondents' petition for allowance of appeal on May 1, 1984, and on April 3, 1985 reversed the decision of the Commonwealth Court and reinstated the decree of the Court of Common Pleas. Petitioners did not seek rehearing before the Supreme Court of Pennsylvania. This petition for a writ of certiorari followed. The constitutional issues with respect to which petitioners seek review have been raised in each stage of this action.[2]

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2. In the Court of Common Pleas of Butler County, petitioners argued in their brief in support of their motion for summary judgment that the court was constitutionally required to give effect to the action of the Presbytery in replacing the session of Middlesex United Presbyterian Church. The Court of Common Pleas held to the contrary and entered summary judgment for the respondents (App. 47a).

In the Brief for Appellants filed in the Commonwealth Court, petitioners argued, "By refusing to recognize and enforce the Presbytery's determination that it, through its Administrative Commission, has the right to possession and control of the Middlesex property, the Court below substituted its interpretation of denominational law for the interpretation of the denomination itself on an important question of church polity and authority . . . . The result in the Court below deprives the [United Presbyterian Church] of the constitutional protection

(Cont'd)

REASON FOR GRANTING THE WRIT

I.

The decision of the Supreme Court of Pennsylvania violates the First and Fourteenth Amendments by substituting that Court's judgment for the judgment of a superior judicatory of a hierarchical religious denomination regarding a question of church polity and by refusing to enforce the express provisions of the constitution of the United Presbyterian Church that place the church property at issue under the control of the Presbytery of Beaver-Butler, and is thereby directly contrary to this Court's decisions in *Serbian Eastern Orthodox Diocese v. Milivojevich; Kreshik v. Saint Nicholas Cathedral;* and *Jones v. Wolf.*

The decision of the Supreme Court of Pennsylvania has the effect of overruling the Presbytery's action in replacing the session of Middlesex United Presbyterian Church with an administrative commission with the full powers of a session, including exclusive authority over the uses of the local church property, pursuant to the express provisions of the constitution of the United Presbyterian Church. The decision below is contrary to the guarantee of the free exercise of religion accorded the United Presbyterian Church by the First and Fourteenth Amendments

(Cont'd)

afforded hierarchical religious denominations . . . ." The Commonwealth Court reversed the Court of Common Pleas and directed that summary judgment be entered in favor of petitioners (App. 39a).

In the Brief for Appellees filed in the Supreme Court of Pennsylvania, petitioners argued that "Middlesex's argument that the Commonwealth Court's decision in favor of the Presbytery violates the First Amendment is entirely without merit. Any other decision would have deprived the United Presbyterian Church of the constitutional protection afforded hierarchical religious denominations . . . ." The Supreme Court of Pennsylvania reversed the Commonwealth Court and reinstated the decree of the Court of Common Pleas (App. 17a).

to the Constitution of the United States, as that constitutional guarantee has been consistently interpreted by this Court.

This Court reaffirmed in its most recent decision regarding church property disputes, *Jones v. Wolf,* 443 U.S. 595 (1979), that civil courts may not substitute their judgment for the judgment of judicatories of hierarchical denominations regarding matters of church doctrine or matters of church polity, or government:

> Most importantly, the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice. *Serbian Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 710 (1976); *Maryland & Va. Churches v. Sharpsburg Church,* 396 U.S. 367, 368 (1970); *Presbyterian Church I,* 393 U.S., at 449. As a corollary to this commandment, the Amendment requires that civil courts defer to the resolution of issues of religious doctrine or *polity* by the highest court of a hierarchical church organization. *Serbian Orthodox Diocese,* 426 U.S., at 724-725; cf. *Watson v. Jones,* 13 Wall. 679, 733-734 (1872).

Id. at 602 (emphasis added).[3]

The action of the Presbytery of Beaver-Butler to replace the session of the Middlesex United Presbyterian Church with an

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3. This Court and many state courts have held that the denomination has a hierarchical, not a congregational, polity. *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871); *Fonken v. Community Church of Kamrar*, 339 N.W.2d 810 (Iowa 1983); *Babcock Memorial Presbyterian Church v. Presbytery of Baltimore*, 296 Md. 573, 464 A.2d 1008 (1983), *cert. denied*, 104 S.Ct. 1287 (1984); *Presbytery of Cimarron v. Westminster Presbyterian Church*, 515 P.2d 211 (Okla. 1973), *cert. denied*, 416 U.S. 961 (1974); *Presbytery of Seattle, Inc. v. Rohrbaugh*, 79 Wash.2d 367, 485 P.2d 615 (1971), *cert. denied*, 405 U.S. 996 (1972).

administrative commission with full powers of a session, including authority over the property used by the local church, is recorded in the records of the Presbytery, and included in the record in the instant case, as follows:

> At a special meeting of the Beaver-Butler Presbytery on Monday, April 27, 1981, the Presbytery voted to approve the recommendation of the Ministerial Relations Committee that the Moderator of Beaver-Butler Presbytery appoint an administrative commission to visit the Middlesex United Presbyterian Church for the following purposes and with the following authority:
>
> 1. To replace the Session of Middlesex United Presbyterian Church with full powers of Session (41.15 [the section of the constitution of the United Presbyterian Church authorizing such action])
>
> 2. To seek reconciliation with those who voted to leave the denomination
>
> 3. To determine an accurate roll of active members of Middlesex United Presbyterian Church, deleting those who are leaving the denomination
>
> 4. To offer counsel and pastoral support to continuing active members of Middlesex United Presbyterian Church
>
> 5. To appoint Chairperson of Commission as moderator of Session

> 6. To take any action necessary, including the use of the civil courts, to preserve the rights of the Commission, Beaver-Butler Presbytery, and the United Presbyterian Church in the U.S.A. in the properties, real and personal, of the Middlesex United Presbyterian Church, and to prevent diversion of the property to uses inconsistent with the authority of the Beaver-Butler Presbytery and the interests of the United Presbyterian Church in the U.S.A.

Because respondents did not appeal to the Synod or to the General Assembly, this action stands as the decision of the highest judicatory of the denomination to consider the matter.

This action was taken pursuant to an express provision of the constitution of the United Presbyterian Church, which provides as follows:

> Whenever, after a thorough investigation, and after full opportunity to be heard has been accorded to the session in question, the presbytery of jurisdiction shall determine that the session of a particular church is unable or unwilling to manage wisely the affairs of its church, the presbytery may appoint a commission composed of ministers and ruling elders, with the full power of a session. This commission shall take the place of the existing session, if any, which shall cease to act until such time as the presbytery shall otherwise direct.

The decision of the Presbytery, made pursuant to this provision, that the session of Middlesex United Presbyterian Church was "unable or unwilling to manage wisely the affairs of its church,"

reflected the Presbytery's determination that the vote to withdraw violated church law. Respondents have not disputed that the Presbytery followed the procedures set forth above, including making a thorough investigation and providing an opportunity to be heard, prior to appointing the administrative commission with full powers of a session.

The powers of a session, and thus the powers of the administrative commission appointed by the Presbytery, are equally explicit in the constitution of the United Presbyterian Church, which provides in pertinent part:

> Subject to the provisions of the Directory for Worship, the session shall have and exercise exclusive authority . . . over the uses to which the church buildings and properties may be put, but may temporarily delegate the determination of such uses, subject always to the superior authority and direction of the session . . . .
>
> * * *
>
> The church session shall have authority over all of the affairs and activities of the particular church, except such matters as may, by this Form of Government, be specifically accorded to the pastor, to the congregation, or to a higher judicatory. The session may from time to time delegate administrative responsibilities in respect to the care and management of church properties and in respect to the financial affairs of the church either to the board of trustees or to the board of deacons or in part to one and in part to the other, subject always to the superior authority and direction of the session . . . .

This Court consistently has held that civil courts may not overrule actions of authorities of hierarchical denominations with respect to matters of church polity. In *Kreshik v. Saint Nicholas Cathedral*, 363 U.S. 190 (1960), this Court held that the Court of Appeals of New York could not constitutionally substitute its judgment for the judgment of the Moscow-based authorities of the Russian Orthodox Church with respect to which church official was entitled to occupy and to control the use of Saint Nicholas Cathedral in New York City. *See Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94 (1952) (state may not by legislation transfer hierarchical control of a denomination, and thus control over church property, from one group to another).

In *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976), this Court held that the Supreme Court of Illinois could not constitutionally substitute its judgment for the judgment of the Holy Assembly of Bishops and the Holy Synod of the Serbian Orthodox Church with respect to who was to be the bishop of the American-Canadian Diocese with control over the diocesan property, and concluded as follows:

> In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them.

Id. at 724-725.

The ecclesiastical authority by which the Presbytery of Beaver-Butler replaced the session of the Middlesex United Presbyterian Church with an administrative commission with full powers of a session, including authority over the property used by the particular church, is as valid as the authority of the church tribunals recognized by this Court in the *Serbian* and *Kreshik* decisions and should have been so recognized by the Supreme Court of Pennsylvania. The United Presbyterian Church is entitled to the same protection under the First and Fourteenth Amendments as was accorded the Russian Orthodox Church and the Serbian Orthodox Church in those decisions.

The principle that civil courts may not substitute their judgment for the judgment of the authorities of hierarchical denominations with respect to issues of religious doctrine or church government was reaffirmed in *Jones v. Wolf*, this Court's most recent decision regarding the resolution of church property disputes. 443 U.S. at 602.[4] The Supreme Court of Pennsylvania failed to recognize, however, that decisions of tribunals of hierarchical churches on matters of church polity — such as the replacement of the session of a local church — are to be accorded the same constitutional protection as decisions with respect to church doctrine.

Because it perceived no theological question at issue, the Supreme Court of Pennsylvania reasoned that it was not required

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4. The issue presented here, that the decision below in effect overruled the action of the Presbytery in replacing the session of Middlesex United Presbyterian Church, was not present in *Jones v. Wolf*. The administrative commission appointed in *Jones v. Wolf* had investigatory powers only, because the constitution of the Presbyterian Church in the United States, the denomination involved in *Jones v. Wolf* and in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969), contained no provision for presbyteries to replace sessions with administrative commissions with full powers of a session.

to give effect to the Presbytery's action and instead could base its decision solely on its own reading of the constitution of the United Presbyterian Church to determine what "agreement" the respondents had with the denomination. (App. 10a, 12a). This Court has made clear, however, that even in cases in which such an approach is a constitutionally permitted method of resolving a church property dispute, the civil court is required "to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form." *Jones v. Wolf*, 443 U.S. 595, 606 (1979).[5] The constitution of the United Presbyterian Church is described in its initial paragraphs as "the system of union and the form of church government and discipline which they have adopted" and particular churches, such as Middlesex United Presbyterian Church, are defined in the constitution as "a number of professing Christians, with their children, voluntarily associated together for divine worship and godly living, agreeably to the Holy Scriptures, and *submitting to a certain form of government*" (emphasis added). It is clear from the constitution of the United Presbyterian Church that respondents "agreed" to adhere to the form of church government set forth in the constitution, including those provisions setting forth the power of presbyteries to replace the session of a local church with an administrative commission with full powers of a session, including authority over the property used by the local church.

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5. Since *Jones v. Wolf* was decided by this Court, the highest courts of Iowa and Maryland have held in favor of the United Presbyterian Church in church property disputes, *Fonken v. Community Church of Kamrar*, 339 N.W.2d 810 (Iowa 1983), *Babcock Memorial Presbyterian Church v. Presbytery of Baltimore*, 296 Md. 573, 464 A.2d 1008 (1983), *cert. denied*, 104 S.Ct. 1287 (1984), and the highest courts of South Dakota, Missouri, and New York have held to the contrary. *Foss v. Dykstra*, 342 N.W.2d 220 (S.D. 1983); *Presbytery of Elijah Parish Lovejoy v. Jaeggi*, ____ Mo. ____ , 682 S.W.2d 465 (1984), *cert. denied*, 105 S.Ct. 2361 (1985); *United Presbyterian Church in the United States of America v. First Presbyterian Church of Schenectady*, 62 N.Y.2d 110, 476 N.Y.S.2d 86, 464 N.E.2d 454, *cert. denied*, 105 S.Ct. 514 (1984).

By failing to give effect to the action of the Presbytery in replacing the session of Middlesex United Presbyterian Church according to the express provisions of the constitution of the United Presbyterian Church, the Supreme Court of Pennsylvania substituted its judgment for the judgment of the authorities of a hierarchical denomination with respect to important matters of church polity, and in effect reinstated the session replaced by the Presbytery. This result denies the United Presbyterian Church the free exercise of religion guaranteed by the First Amendment, which this Court has held encompassess the power of hierarchical religious denominations "to decide for themselves, free from state interference, matters of church governance as well as those of faith and doctrine," *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 721-722 (1976), and is contrary to the First Amendment principles upheld by this Court in the *Kreshik* decision, and most recently, in *Jones v. Wolf*.

CONCLUSION

For all of the reasons set forth above, the Presbytery of Beaver-Butler of the United Presbyterian Church in the United States of America, *et al.*, respectfully urges this Court to grant a writ of certiorari and to reverse the decision of the Supreme Court of Pennsylvania.

Respectfully submitted,

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OPINION OF THE SUPREME COURT OF PENNSYLVANIA

SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

No. 36 W.D. Appeal Dkt. 1984

THE PRESBYTERY OF BEAVER-BUTLER OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, ET AL.,

Appellees

v.

MIDDLESEX PRESBYTERIAN CHURCH,

Appellant

Appeal from the Order of the Commonwealth Court dated February 10, 1984, No. 1740 C.D. 1982, Reversing the Order of the Court of Common Pleas of Butler County, No. 81-024

80 Pa. Cmwlth, Ct. 211, 471 A. 2d 1271 (1984)

ARGUED: SEPTEMBER 13, 1984

OPINION OF THE COURT

MR. JUSTICE McDERMOTT FILED: April 3, 1985

This is a dispute over the ownership of church property. The issue presented is whether the members of a local church which has been affiliated with a national denomination can retain ownership of the assets and property of that local church after having terminated their membership in that denomination.

Opinion

The principal appellant[1] is the Middlesex Presbyterian Church ("Middlesex"), which is a Pennsylvania non-profit corporation, incorporated in 1907. The primary appellee[2] is the Beaver-Butler Presbytery of the United Presbyterian Church in the United States of America representing the interests of the United Presbyterian Church in the United States of America (UPCUSA). UPCUSA is a nation-wide religious denomination which was formed in 1958 by the merger of the Presbyterian Church in the United States of America, and the United Presbyterian Church in North America.

From its inception Middlesex was a participating church in the Presbyterian Church in the United States of America. Upon an organizational merger in 1958, Middlesex became a member church under the banner of UPCUSA, and remained so until its disaffiliation in April, 1981. That separation was effected by a corporate charter amendment whereby the membership of Middlesex voted to disaffiliate from UPCUSA;[3] and it was that decision which precipitated the present controversy.

The original complaint in equity was filed by appellees on July 31, 1981, in the Court of Common Pleas of Butler County. Therein appellees sought delivery of all church property, an accounting of all church assets, and an injunction against the seceding members from in any way using or dissipating the assets

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1. The officers of Middlesex were also named parties.

2. Also named as plaintiffs below were the "Administrative Commission appointed by that Presbytery; and the "Middlesex United Presbyterian Church in the United States of America," an unincorporated association of unnamed individuals who oppose Middlesex' departure from the denomination.

3. This action followed a special meeting on April 6, 1981, of 156 of the 271 members of the Middlesex congregation at which 125 members voted to authorize such an amendment.

of the church. Defendants, appellants herein, filed preliminary objections to that complaint.

Thereafter, on September 14, 1981, appellees filed a second complaint in equity, seeking to secure the right of those members who did not vote to secede to utilize the church property for worship while the original litigation was proceeding. On that date a special injunction was issued *ex parte* and appellants were enjoined from using the property in any manner inconsistent with the dictates of the central body, i.e., the Beaver-Butler Presbytery. On September 18, 1981, a hearing was held on this injunction. On September 21, 1981, the injunction was dissolved, without prejudice to the resolution of the parties' rights in the original action.

On November 10, 1981, appellants, defendants below, filed their answer to the original complaint and new matter, responding that they never agreed to surrender title to their property to the national organization. Following the completion of discovery, both sides moved for summary judgment. The Honorable John C. Dillon, P.J., rendered summary judgment in favor of Middlesex, finding no original agreement of trust placing the local church property in the control or ownership of the national church. His findings were affirmed by a court *en banc,* and a Final Decree was entered, which, upon appeal to the Commonwealth Court, was reversed. We allowed appeal, and now reverse the Commonwealth Court.

I.

A dispute among members of a religious denomination over the ownership of church property is not without precedent. Over a hundred years ago the Supreme Court of the United States was faced with a dispute in a southern church over the issue of slavery.

Opinion

In *Watson v. Jones,* 80 U.S. 679 (13 Wall. 1871), members of the Walnut Street Church of Louisville, Kentucky, fell into conflict when the national body, the Presbyterian Church of the United States, required their members to disavow slavery as a moral evil. Dissidents in the Walnut Street Church refused compliance and seized the local church. The national body of the Presbyterian Church brought suit to regain possession of the church property. The Supreme Court in an oft-cited case laid down a rubric for civil courts that has been honored, enforced, and enlarged ever since. The *Watson* Court defined what has come to be honored as the "deference rule". They said in 1871:

> whenever the *questions of discipline, or of faith, or ecclesiastical rule, custom, or law* have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them in their application to the case before them. (Emphasis supplied).

Id. at 727. While the *Watson* Court did not fasten their rule to the First Amendment, it was so profound a wisdom that subsequent courts found it a matrix for their First Amendment considerations.

The "deference rule", as the *Watson* ruling is familiarly known, was the beginning of an evolution from a previous doctrine known as the "departure from doctrine" rule, which had allowed courts to determine property rights if they found that a church body had departed from or changed their theological doctrines as to become something different from the intentions of their founders or their members.

Opinion

The wisdom of the *Watson* Court is as clear now as it ever was: the right to practice one's belief and worship as one chooses is so deep a root of our constitutional culture that a court, even one with the best intentions, can be no more than a clumsy intruder into the most delicate and sensitive areas of human life. When Caesar enters the Temple to decide what the Temple believes, he can leave behind only his own views. The view of a court as to who are heretics among warring sects is worth nothing, and must count as nothing if our cherished diversity of religious views is to prevail.

The "deference rule" of *Watson* became a postulate of the First Amendment in *Kedroff v. St. Nicholas Cathedral,* 344 U.S. 94 (1952). In *Kedroff,* the New York legislature intervened by legislative act to settle the ownership of the property of the Russian Orthodox Church in America. The New York legislature decided that since the Czar of Russia was no more, the orthodoxy of the Orthodox Church of Russia had fallen among infidels, depriving the Patriarch of Moscow of the authority to appoint hierarchs of the church in New York.

The Supreme Court, loathe to interfere even upon so inviting a subject, maintained their rule that a doctrinal dispute belonged to the church authorities, even those in Moscow, and struck down the legislative Act of the New York Assembly as an unconstitutional intrusion into religious discipline. *Kedroff* locked *Watson* to the First Amendment and reaffirmed the "deference rule". Quoting *Watson,* the court said:

> In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality

> and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if anyone aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.

Kedroff v. St. Nicholas Cathedral, supra at 114, 115. For themselves the court concluded:

> Ours is a government which by the "law of its being" allows no statute, state or national, that prohibits the free exercise of religion. There are occasions when civil courts must draw lines between the responsibilities of church and state

> for the disposition or use of property. Even in those cases when the property right follows as an incident from decisions of the church custom or law on ecclesiastical issues, the church rule controls. This under our Constitution necessarily follows in order that there may be free exercise of religion.

Id. at 120, 121. (Footnote omitted.)

All disputes among members of a congregation, however, are not doctrinal disputes. Some are simply disputes as to meaning of agreements on wills, trusts, contracts, and property ownership. These disputes are questions of civil law and are not predicated on any religious doctrine. While it is true that parties may agree to settle their disputes according to their own agreed fashion, the question of what they agreed to, or whether they agreed at all, are not doctrinal and can be solved without intruding into the sacred precincts. From this consideration has evolved what is called the "neutral principles approach" delineated in *Presbyterian Church in the United States v. Blue Hull Memorial Church,* 393 U.S. 440 (1969), where the rule was carefully announced.

> Thus, the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes. It is obvious, however, that not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are neutral principles of law, developed for use in all property disputes, which can be applied

> without "establishing" churches to which property is awarded. But First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice. If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern. Because of these hazards, the First Amendment enjoins the employment of organs of government for essentially religious purposes, *Abington School District v. Schempp,* 374 U.S. 203 (1963); the Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine.

Id., at 449. *See, Maryland & Virginia Eldership v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367 (1970).

In *Jones v. Wolf,* 443 U.S. 595 (1979), the Court went on to argue the merits of this approach.

> The primary advantages of the neutral-principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity. The method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely

> from entanglement in questions of religious doctrine, polity, and practice. Furthermore, the neutral-principles analysis shares the peculiar genius of private-law systems in general — flexibility in ordering private rights and obligations to reflect the intentions of the parties.

Id. at 603.

Since *Jones,* we note that a number of our sister state jurisdictions have adopted this neutral view. *See Presbytery of Riverside v. Community Church of Palm Springs,* 89 Cal. App.3d 910, 152 Cal. Rptr. 854, *cert. denied* 444 U.S. 974 (1979); *Jones v. Wolf,* 241 Ga. 208, 243 S.E.2d 860 (1978), *vacated* 443 U.S. 595, *reaffirmed* 244 Ga. 388, 260 S.E.2d 84 (1979), *cert. denied,* 444 U.S. 1080 (1980); *York v. First Presbyterian Church of Anna,* No. 5-83-0716 App. Ct. 5th Dist., ____ Ill. App.3d ____, ____ N.E. 2d ____ (1984); *Maryland & Virginia Eldership v. Church of God,* 249 Md. 650, 241 A.2d 691 (1968) *vacated* 393 U.S. 528, *reaffirmed* 254 Md. 162, 254 A.2d 162 (1969), *app. dismd.* 396 U.S. 367 (1970); *Presbytery of Elijah Paris Lovejoy v. Jaeggi,* ____ Mo. ____, 682 S.W.2d 465 (1984); *First Presbyterian Church of Schenectady v. United Presbyterian Church of the United States of America,* 62 N.Y.2d 110, 464 N.E.2d 454 (1984); *Christensen v. Roumfort,* No. 83 CA. 124, Ohio Ct. of Appeals 7th Dist., ____ Ohio App.2d ____, ____ N.E.2d ____ (1984); *Foss v. Dykstra,* 342 N.W.2d 220 (S.D. 1983). *See also, Trinity Presbyterian Church v. Tankersley,* 374 So.2d 861 (Ala. 1979), *cert. denied;* 445 U.S. 904 (1980).[4]

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4. We recognize that the acceptance of this neutral view has not been unanimous. *See, e.g., Mills v. Baldwin,* 362 So.2d 2 (Fla. 1978) *vacated,* 443 U.S. 914 (1979) *reinstated* 377 So.2d 971 (Fla. 1980) *cert. denied,* 446 U.S. 983 (1980); *Fonken v. Community Church of Kamrar,* 339 N.W.2d 810 (Iowa 1983); *Bennison v. Sharp,* 121 Mich. App. 705, 329 N.W.2d 466 (1982); (Cont'd)

It is exactly these principles of deference and neutrality that compete in the instant case. UPCUSA insists upon the principle of deference, arguing that they are the final ecclesiastical tribunal, and hence their decision binds. Middlesex argues that they never subscribed to an agreement surrendering their property to the national church, and submit that under neutral principles the question is not doctrinal but a civil question of trust and contract.

The Commonwealth Court chose to accept that the question was one of deference and yielded the issue to the judicature of UPCUSA. We believe, under the circumstances, they went further than required. Indeed they seemed to have mandated deference simply because there existed a judicature in the national church body. They would have been correct if the issue was doctrinal, it however is, whether there ever existed an agreement at all: an issue that requires no doctrinal exegesis.

The error of the Commonwealth Court resulted from relying upon the broad language of some of the prior decisions of this Court, without taking into account the context in which that language appeared. Most notable among the various citations was that court's reliance on the following language from *Western Pennsylvania Conference of United Methodist Church v. Everson Evangelical Church*, 454 Pa. 434, 312 A.2d 35 (1973), *app. dismd.* 416 U.S. 923 (1974):

(Cont'd)

Tea v. Protestant Episcopal Church, 96 Nev. 399, 610 P.2d 182 (1980); *Protestant Episcopal Church v. Graves*, 83 N.J. 572, 417 A.2d 19 (1980) *cert. denied* 449 U.S. 1131 (1981); *Church of God of Madison v. Noel*, 318 S.E. 920 (W.Va. 1984). However we are not persuaded by the reasoning of these decisions to alter the course which we set in *Western Pennsylvania Conference of United Methodist Church v. Everson Evangelical Church*, 454 Pa. 434, 312 A.2d 35 (1973), *app. dismd.* 416 U.S. 923 (1974). *See* pp. 10-11 *infra.*

Opinion

> It has long been established in Pennsylvania that when a local church is a member of and subscribes to the doctrine and control of a hierarchically governed denomination, it cannot sever itself from such religious denomination without forfeiting its property to the parent denomination.

Id. at 437, 312 A.2d at 37. Although the cited language may, if viewed in a vacuum, support the Commonwealth Court decision, that language did not appear in a vacuum. To the contrary, the Court clearly indicated what was intended by that language by the following explanation:

> It is true that courts are proscribed from turning to an interpretation of ecclesiastical law in resolving title, and the right to possession of church property. In fact, *courts may not inquire into ecclesiastical questions.* (Citation omitted.) *However, courts are not proscribed from entertaining and resolving such disputes if such can be resolved by the application of "neutral principles of law."* (Emphasis supplied.)

Id. at 439, 312 A.2d at 38.

In *Everson* the parties seeking to secede from the parent organization admitted that the governing rules, by which they were bound, specifically provided "that the parent denomination governs all matters relating to the use of property held by its member churches." *Id.* at 438, 312 A.2d at 37. It was this admission which mandated the Court's ultimate affirmance of the award of property to the parent organization. It was definitely

not, however, a blind deferral by this Court to the will of the parent group, as the Commonwealth Court's interpretation implied.

In the context of the present case we now hold that the Commonwealth Court should not have applied the broad deference rule which it chose; and that in cases where the resolution of a property dispute involves no inquiry into ecclesiastical questions, courts of this Commonwealth are to apply the same principles of law as would be applied to non-religious associations.[5]

II.

Resolution of the underlying dispute here is not accomplished by the mere acceptance of the theory urged upon us by Middlesex. That theory now must be applied to the facts.[6] However, before proceeding further, it is important to emphasize that, as evidenced by the record, the present dispute is not based on a doctrinal schism. Neither party here is arguing that they are the true church in an ecclesiastical sense and the record is bare of the subject indication. Consequently, our decision should in no way be considered as a resolution of any competing doctrinal issues. What is involved here is a pristine question of property control, without

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5. We note that some lower courts in Pennsylvania have already applied this approach. *For example,* in *Vaughn v. Taylor,* No. 82-04260 (C.P. Allegheny, October 20, 1982), then Judge, now Justice Papadakos held that, so long as no ecclesiastical questions are involved, property disputes between competing church groups may be resolved by applying the property laws of Pennsylvania to the facts. Adjudication at p. 5. *See also Presbytery of Donegal of Calhoun,* No. 80-78 (C.P. Chester, April 14, 1984) (Bodley, J.).

6. In this vein we note that the Commonwealth Court, even had they accepted appellant's theory, would nevertheless have ruled against them; since in their view the facts supported a finding of a trust in favor of UPCUSA.

the religious entanglements which prompted the *Watson* Court, and prior panels of this Court, to yield the gavel to the ecclesiastical hierarchies.

The standard of review for an appellate court in reviewing the findings of a court in equity is well established. Facts found by the chancellor, when supported by competent evidence in the record, are binding. However, no such deference is mandated for conclusions of law, and we are at liberty to review such conclusions. *Sechler v. Sechler,* 403 Pa. 1, 4, 169 A.2d 78, 80 (1961). *See Curtis v. Redevelopment Authority,* 482 Pa. 58, 393 A.2d 377 (1978); *Felmee v. Lockett,* 466 Pa. 1, 351 A.2d 273 (1976).

In the context of the present case the chancellor's findings of facts were as follows:

> 1. The Middlesex Presbyterian Church has been affiliated with the United Presbyterian Church in the United States of America and its predecessors since the Church's inception in 1799.
>
> 2. Pursuant to a vote of 125-31 on April 6, 1981, the members of Middlesex duly amended its charter to disaffiliate from UPCUSA, effective April 18, 1981.
>
> 3. Pennsylvania statutory and case law treat religious denominations and their affiliates like any other voluntary organization; thus they have only such rights as are granted to them by the denomination's internal law.

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4. The Constitution of UPCUSA consists of two parts: The Book of Confessions and The Book of Order which contains the Directory for Worship, the Form of Government, and the Book of Church Discipline. (Affidavit of Rev. J. Clyde Henry, D.D. at 4.)

5. The UPCUSA Constitution is the supreme law of the denomination. The statements of General Assemblies are not the law of the Church. Only when an amendment is adopted do resolutions, reports, etc., have the force and effect of law.

6. The history of the UPCUSA Book of Order reflects that in 1979, an amendment was proposed which would have created a trust in favor of UPCUSA with respect to property owned by affiliated churches. That amendment was not ratified and never became part of the UPCUSA constitution until May 23, 1981, after Middlesex voted to disaffiliate. (Affidavit of Rev. J. Clyde Henry, D.D. at 15; Exhibits C & D to Thorid Affidavit of defendant's in support of their motion for summary judgment.)

7. The Constitution does not prohibit a congregation from disaffiliating, and until May, 1981, did not create a trust, explicit or implicit, in affiliates' property in favor of UPCUSA.

8. The real estate in controversy consists of three parcels of ground in Middlesex Township, Butler County as follows:

Opinion

(a) Ejectment proceedings at No. 4, January Term, 1926, Book 4, Page 149 in case of *Kerns v. Trustees of the Middlesex Congregation*, by jury verdict of October 3, 1825, established title to the original five acre tract.

(b) Deed from Thomas L. Lyon, et. al., to Middlesex Presbyterian Church covering 2½ acres dated May 12, 1948, Deed Book 572, Page 482, and a correction deed recorded in Deed Book 794, Page 386, said parcel to be known as the "Lyon Memorial Park" and to be used for such church purposes as the congregation sees fit, recorded August 21, 1963.

(c) Deed dated September 19, 1948, from Stephen G. Hamilton et al., to Middlesex Presbyterian Church covering five acres recorded in Deed book 582, Page 541.

9. Record title to all of the real and personal property in dispute in this case has been exclusively in Middlesex at all relevant times. There is no evidence that Middlesex ever explicitly agreed to hold its property in trust for UPCUSA.

Though the Commonwealth Court found no error with these findings, they disagreed with the trial court's ultimate conclusion of law, i.e., that no trust existed in favor of the central denomination. The Commonwealth Court's conclusion was that the record revealed an intent to create a trust. On our review of the record we find no support for this latter determination, and we reinstate the decision of the trial court.

Opinion

In order for a court to find that a trust has been created there must exist in the record clear and unambiguous language or conduct evidencing the intent to create the trust. This Court has previously held:

> No particular form of words or conduct is required to manifest the intention to create a trust. Such manifestation of intention may be written or spoken words or conduct indicating that settlor intended to create a trust. (Citations omitted.) *Nevertheless, lack of formality does not obviate the necessity for the appearance of all the elements of a completed trust. Every trust symptom must be present, regardless of informality surrounding the inception of the relationship, or none exists. A trust must be created by clear and unambiguous language or conduct, it cannot arise from loose statements admitting possible inferences consistent with other relationships.* (Emphasis added.)

Bair v. Snyder County State Bank, 314 Pa. 85, 89, 171 A. 272, 275 (1934).

In conducting this inquiry the primary focus must be on the intent of the settlor at the time of the creation of the alleged trust. *See* §45 Bogert, *Trusts and Trustees*, p. 457 (2nd ed. 1984); Restatement, Second, Trusts §23. The putative settlor in this case was clearly Middlesex. In support of this conclusion we note that the Middlesex church was not a creation or offshoot of the central denomination. Rather, the record establishes that the Middlesex church was created and incorporated on the local level by members of the parish; and that all property was retained in the corporate name of the local church. Subsequently, when the local body

voluntarily affiliated with UPCUSA's predecessor, there was no express trust language in the denomination's constitution. Also, it was undisputed that there was never any express trust language in the constitution during the entire period Middlesex remained affiliated with the denomination. In fact, a prior attempt by the predecessor denomination, circa 1929, to include express trust language in the constitution was defeated by the member churches.

The denomination here has cited no evidence that Middlesex ever intended to convey their property interests to them. To the contrary, throughout their entire affiliation Middlesex retained all property in their own corporate name. The Commonwealth Court's reliance on selected passages from the Book of Order was misplaced in that the court ignored the overall intent of that book as a means of overseeing the *spiritual* development of member churches. In addition, these selected provisions, which at most evidence the putative trustee's desired interpretation, are far from constituting the clear unequivocal evidence necessary to support a conclusion that a trust existed.

Accordingly, the order of the Commonwealth Court is reversed and the final decree of the Court of Common Pleas of Butler County is reinstated.

OPINION AND ORDER OF THE COMMONWEALTH COURT OF PENNSYLVANIA

THE PRESBYTERY OF BEAVER-BUTLER OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, et al.

Appellants,

v

MIDDLESEX PRESBYTERIAN CHURCH, et al.

Appellees.

Commonwealth Court of Pennsylvania

Argued Oct. 3, 1983

Decided Feb. 10, 1984

Lee C. McCandless, McCandless, Krizner & Price, Butler, and Gregory M. Harvey, Elizabeth L. Hoop, George W. McKeag, Morgan, Lewis & Bockius, Philadelphia, for appellants.

James A. Taylor, Butler, Roger C. Wiegand, Reed, Smith, Shaw & McClay, Pittsburgh, Kenneth C. Kettering, Pittsburgh, for appellees.

Before ROGERS, CRAIG and DOYLE, JJ.

ROGERS, Judge.

The question of this appeal is that of whether a majority of the members of the congregation of a local church, having

decided to leave the denomination with which the local church has been in union, may retain possession and control of the property appertaining to the local church; or whether in such event possession and control of the property passes to the competent authorities of the denomination.

The question is not, unhappily, a stranger to courts. Because ecclesiastical controversies arouse strong feelings in the participants and because they come trailing the looming presence of the establishment and free exercise clauses of the First Amendment, courts approach them with difference and decide them to the accompaniment of dilatations. It is nevertheless as surely the duty of courts to protect the property rights of religious organizations as of other organizations which come before them.

The local church in this case was Middlesex United Presbyterian Church, an unincorporated congregation, located in Butler County. Middlesex United Presbyterian Church was affiliated with the Presbyterian Church in the United States of America from 1799 until 1958 when the latter merged with the United Presbyterian Church of North America to form the United Presbyterian Church in the United States of America, with which last denomination Middlesex United remained in all respects in union until the events of this case.

The real property used by the Middlesex United Presbyterian Church was in title to, and the personal property was in the charge of, a nonprofit corporation named Middlesex Presbyterian Church, the charter of which, obtained in 1907, provided that the members of the corporation should be members of the congregation of Middlesex United Presbyterian Church, that the trustees of the corporation should be lay members of that congregation and that the purpose of the corporation should be

to worship "according to the faith, doctrine, creed, discipline and usages of the Presbyterian Church in the United States of America," which denomination we learn was organized along the same lines as its successor by merger, the United Presbyterian Church in the United States of America.

On April 6, 1981, at a special meeting of the congregation, called by the pastor, 156 of the 271 members of the Middlesex United Presbyterian Church voted on a proposed resolution that Middlesex United Presbyterian Church should be disaffiliated from the United Presbyterian Church in the United States of America. The vote was 125 to 31 in favor of the resolution. The seceding members then took and retained control of the church's property consisting of a church edifice, a manse, a cemetery, about $14,000 in funds, and other personal property. They formed a new unincorporated local church congregation which they named Middlesex Presbyterian Church, thus dropping the word United. They also caused the charter of the nonprofit corporation, named Middlesex Presbyterian Church, which held title to the church property, to be amended so as to substitute for the statement of adherence to the discipline and usages of the Presbyterian Church in the United States of America, a clause reading that "this corporation shall always be separate and distinct from, and in no way subject to the United Presbyterian Church in the United States of America or any affiliate thereof including the Presbytery or any other entity of said denomination." We learn that the moderator and the seceding members of Middlesex United Presbyterian Church have joined the Presbyterian Church in America, a denomination unrelated to the United Presbyterian Church in the United States of America and one which we are told expressly disclaims any right to the property of local churches.

Opinion and Order

It is appropriate at this point to digress briefly to a description of the organization of the United Presbyterian Church in the United States of America, with which Middlesex United Presbyterian Church was affiliated. Its Constitution consists of two books, The Book of Confessions and The Book of Order. One of the three parts of The Book of Order is the Form of Government which describes the "system of union and the form of government and discipline." The Form of Government provides that congregations are governed by four judicatories, i.e., governing bodies, called the Sessions of the local, or as Presbyterians say particular churches; Presbyteries; Synods; and a General Assembly.

Each particular church is immediately governed by its session consisting of the pastor, also called moderator, and ruling elders in active service. The session "is charged with maintaining the spiritual government of the congregation . . . [and] shall have authority over all of the affairs and activities of the particular church, except such matters as may, by this Form of Government, be specifically accorded to the pastor, to the congregation, or to a higher adjudicatory." The session is given "exclusive authority over the uses to which the church buildings and properties may be put." The Form of Government also provides that any difference between a session and a church congregation shall be resolved in favor of "the position of the session, as the body having superior responsibility for the welfare and program of the church, . . . unless reversed or modified by a higher judicatory."

A presbytery is composed of ministers and elders representing the particular churches within a geographical district. Its jurisdiction includes the power to receive and decide appeals from sessions and to "take effectual care that they observe the Constitution of the Church." The presbytery has the power to

appoint a commission with the full power of a session composed of ministers and ruling elders to take the place of an existing session "[w]henever, after a thorough investigation, and after full opportunity to be heard has been accorded to the session in question, the presbytery of jurisdiction shall determine that the session of a particular church is unable or unwilling to manage wisely the affairs of its church."

A synod is the judicatory next superior to the presbytery and is composed of ministers and ruling elders of not fewer than three presbyteries. Its jurisdiction includes deciding appeals from decisions of presbyteries and its decisions are final on all questions other than those affecting doctrine or the interpretation of the Constitution.

The General Assembly is the highest judicatory and it consists of ministers and elders from each presbytery. It "shall receive all appeals, complaints, and references that affect the doctrine or the interpretation of the Constitution of the Church" and it has "the power of deciding . . . all controversies respecting doctrine and the interpretation of the Constitution of the Church."

Turning again to the history of this litigation, we record that the Presbytery of Beaver-Butler of the United Presbyterian Church in the United States of America, the judicatory having immediate authority over Middlesex United Presbyterian Church, responded to the secession of the moderator and some of the members by appointing an Administrative Commission to replace the local session with full powers of a session. Under the Form of Government the powers of a session include exclusive power over the use to which church buildings and properties may be put.

Opinion and Order

The seceding members of Middlesex United Presbyterian Church refused the demand of the Administrative Commission to deliver up the property, and they changed the locks on the church buildings. The Administrative Commission has held church services in homes for the members of Middlesex United Presbyterian Church who did not withdraw; and those members have also attended services in other churches in union with the United Presbyterian Church in the United States of America.

The Presbytery of Beaver-Butler of the United Presbyterian Church in the United States of America, and the Administrative Commission appointed by the Presbytery,[1] then commenced this action in equity against the Middlesex Presbyterian Church, the new local church founded by the seceding members of the Middlesex United Presbyterian Church and against the moderator and other officers of the newly formed local church.

We will hereafter refer to the plaintiffs in the suit in the trial court, the appellants here, as UPCUSA, the acronym of the United Presbyterian Church in the United States of America, and to the defendants in the trial court, the appellees here, as Middlesex Presbyterian, the first two words in the name assumed by the seceding members, Middlesex Presbyterian Church.

The relief sought by the plaintiffs, described generally, is that the defendants be ordered to turn over the church property to the plaintiffs; that the defendants be enjoined from obstructing

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1. Also joined as plaintiffs were: Middlesex United Presbyterian Church in the United States of America, the unincorporated local congregation before the secession, the Beaver-Butler Presbytery, and Middlesex Presbyterian Church, the non-profit corporation which was the record owner of the Middlesex United properties.

the Administrative Commission in its possession and administration of the church properties; and that the defendants be required to account for moneys of Middlesex United Presbyterian Church.

The chancellor, after hearing, entered a decree nisi dismissing the plaintiff, UPCUSA's, motion for summary judgment and granting the defendant, Middlesex Presbyterian's, motion for summary judgment. UPCUSA's exceptions were dismissed and the decree nisi was entered as the court's final order.

I. Pennsylvania Case Law

Pennsylvania adheres to the so-called deference principle for deciding this class of cases, that is, clashes over property between seceding members of the congregation of a local church on the one and the denomination of which the local church had been a part on the other.

McGinnis v. Watson, 41 Pa. 9 (1861), was, like this case, a dispute between a denomination organized in the Presbyterian manner and the local officers over the meeting house. The Pennsylvania Supreme Court held for the denomination, writing "that in general organizations of united churches, the law of the general organism is binding on all the individual churches, and that even a majority [of a congregation] seceding, lose all their rights in the church property." *Id.* at 30. In *Sutter v. Trustees of the First Reformed Dutch Church*, 42 Pa. 503 (1862), the Supreme Court reiterated the deference principle in deciding a dispute over local church property in favor of a presbyterian denomination and against the local seceders, on the authority of *McGinnis v. Watson, supra.*

The leading case and the acknowledged wellspring of the deference principle is *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 20 L.Ed. 666 (1871). The suit was brought in the federal courts on diversity jurisdiction. The facts of *Watson v. Jones* were materially identical to those of the case at hand down to the fact that the denomination was presbyterian. The Supreme Court of the United States held that where property is held by a religious congregation which is a subordinate member of a general church organization in which there are superior tribunals, with a general power of control more or less complete in some supreme judicatory over the whole membership of the general organization, and a question is raised in a civil court as to the possession and control of the church property, which question has been decided by the highest of the judicatories of the several organizations to which the matter has been presented, the civil courts must accept such decision as final and binding on them. The Supreme Court of the United States cited as authority for its holding, *McGinnis v. Watson, supra*,[2] and in turn much later the Supreme Court of

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2. The *Watson* court also cited as authority for the deference principle the case of *German Reformed Church v. Seibert*, 3 Pa. 282 (1846). This case dealt not with property but with the excommunication of a member. The Supreme Court of Pennsylvania held first, that civil courts must accept the decisions of the tribunals of the denomination and second, that the excommunicated member could not sue in mandamus until there had been a final adjudication by the denomination judicatories. The court in *Seibert* wrote "civil courts, if they should be so unwise as to attempt to supervise their [ecclesiastical courts] judgments on matters which come within their jurisdiction, would only involve themselves in a sea of uncertainty and doubt, which would do anything but improve either religion or good morals." *Id.* at 291. Similar expressions have appeared in the cases and in learned writings in support of continued adherence to the deference principle and in opposition to neutral principles down the years. *See* Adams and Hanlon, *Jones v. Wolf: Church Autonomy and the Religious Clauses of the First Amendment*, 128 U. of Pa.L.Rev. 1291, 1326 (1980).

Pennsylvania referred to *Watson v. Jones, supra*, as the landmark statement of the deference principle. *St. Michael and Archangel Russian Orthodox Greek Catholic Church v. Uhniat*, 436 Pa. 222, 234, 259 A.2d 862, 867 (1969), *cert. denied*, 400 U.S. 823, 91 S.Ct. 45, 27 L.Ed.2d 51 (1970).

Some of the many Pennsylvania cases applying the deference principle accepting as binding the decisions of the judicatories of the hierarchical denominations are:

Sutter v. The Trustees of the First Reformed Dutch Church, supra, 42 Pa. at 512 (1862): "[t]he majority [of a local congregation] may direct and control consistently with the particular and general laws of the organism, but not in violation of them."

Schnorr's Appeal, 67 Pa. 138, 148 (1870) (Williams, J., concurring): "a majority of a church congregation may direct and control in church matters consistently with the particular and general laws of the organism or denomination to which it belongs, but not in violation of them, and that in church organizations those who adhere and submit to the regular order of the church, local and general, though a minority are the true congregation and corporation, if incorporated."

Morris v. Featro, 340 Pa. 354, 360, 17 A.2d 403, 406 (1941): "St. John's Church was organized and dedicated as and is a Greek Catholic church united with Rome . . . . It follows that the control, disposition and management of the property of this church, as well as other ecclesiastical matters, are subject to and are exclusively governed by the laws, canons, rules and regulations of such church."

Church of God v. Church of God, 355 Pa. 478, 484, 50 A.2d 357, 360 (1947): "[a] local church congregation which is part of a larger religious organization cannot divorce or separate itself from the church family, set up a new independent organization, and by so doing entitle itself to retain the congregational property."

Pilgrim Holiness Church v. Pilgrim Holiness Church of Athens Township, 436 Pa. 239, 241-242, 259 A.2d 870, 871 (1969): "[i]t is unquestionably generally correct that if a church organization is organized and holds its property as a constituent part of any particular religious denomination, it cannot sever itself from such religious denomination without forfeiting its rights and property to the parent denomination."

Western Pennsylvania Conference of United Methodist Church v. Everson Evangelical Church, 454 Pa. 434, 437, 312 A.2d 35, 37 (1973): "[i]t has long been established in Pennsylvania that when a local church is a member of and subscribes to the doctrine and control of a hierarchically governed denomination, it cannot sever itself from such religious denomination without forfeiting its property to the parent denomination."

[1] In sum, the case law of Pennsylvania is that where property is held by a local church congregation which is a member of a general church organization, or denomination, in which there are superior tribunals with a supreme judicatory, i.e. a denomination with a hierarchical form of government, and the question is raised in a civil court over property, which question has been decided by the highest of the judicatories to which it has been presented, the civil courts must accept such decision as final and binding on them.

II. The Act of 1935, P.L. 353

[2] The Pennsylvania rule of deference has also been instituted by statute. By Act of June 20, 1935, P.L. 353, 10 P.S. § 81, the Legislature amended Section 7 of the Act of April 26, 1855, P.L. 328 (sometimes called the Lay Control of Church Property Act), to read as follows:

> Wheresoever any property, real or personal, has heretofore been or shall hereafter be bequeathed, devised or conveyed to any ecclesiastical corporation, bishop, ecclesiastic, or other person, for the use of any church, congregation, or religious society, for or in trust for religious worship or sepulture, or for use by said church, congregation, or religious society, for a school, educational institution, convent, rectory, parsonage, hall, auditorium, or the maintenance of any of these the same shall be taken and held subject to the control and disposition of such officers or authorities of such church, congregation, or religious society, having a controlling power according to the rules, regulations, usage, or corporate requirements of such church, congregation, or religious society, which control and disposition shall be exercised in accordance with and subject to the rule and regulations, usages, canons, discipline and requirements of the religious body, denomination or organization to which such church, congregation, or religious society shall belong, but nothing herein contained shall authorize the diversion of any property from the purposes, uses,

> and trusts to which it may have been heretofore lawfully dedicated, or to which it may hereafter, consistently herewith, be lawfully dedicated.

Quite simply, the statute provides that local church property is to be held and controlled according to the rules, regulations or corporate requirements of the organization to which the local church belongs. The Supreme Court of Pennsylvania has without deviation held that the statute requires that properties attached to seceding local churches formerly in union with hierarchically governed denominations remain with the denomination. In *St. Michael and Archangel Russian Orthodox Greek Catholic Church v. Uhnlat, supra*, 436 Pa. at 238, 259 A.2d at 869 (1969), *cert. denied*, 400 U.S. 823, 91 S.Ct. 45, 27 L.Ed.2d 51 (1970), the court wrote: "Apart from the decisional law discussed . . ., the Lay Control of Church Property Act, supra, requires that the property of St. Michael's church remain subject to the control of the Patriarchate. Construing that act in *Canovaro v. Brothers of The Order of Hermits of St. Augustine*, 326 Pa. 76, 191 A. 140 (1937), we held that a local church cannot sever its relation with the ecclesiastical body under whose direction it was organized and with which it has continually been affiliated without the consent of such ecclesiastical body. *See also, Kraftician v. Greek Catholic Congregation*, 366 Pa. 431, 77 A.2d 875 (1951) and *Gabster v. Mesaros*, 422 Pa. 116, 220 A.2d 639 (1966)."

The holding of *Church of God v. Church of God, supra*, 355 Pa. at 484, 50 A.2d at 360, was that "[t]he law of this Commonwealth concerning the control and disposition of property owned by religious societies that are units of a denominational system is embodied in the Act of April 6, 1855, P.L. 328, as last amended by the Act of June 20, 1935, P.L. 353, 10 P.S. § 81, by the terms of which the control of any local congregation

over property conveyed to its use is to be exercised in accordance with and subject to the rules, regulations, usages, canons, discipline, and requirements of the religious body, denomination, or organization to which the local congregation belongs."

In *Canovaro v. Brothers of The Order of Hermits of St. Augustine*, 326 Pa. at 76, 87-88, 191 A. 140, 146-147 (1937), it was declared that "[t]he long established and deeply imbedded policy of entrusting the ultimate power of control and disposition of church property to the laity subject to the uses for which it was dedicated was uprooted by the Act of 1935 . . . . The effect of this statute is to make supreme the internal rules, regulations and usages of religious societies respecting control of their properties."

UPCUSA is a hierarchically governed denomination. Not only do the cases so hold; it has been used as the example of a hierarchical denomination. *Pilgrim Holiness Church v. Pilgrim Holiness Church of Athens Township, supra*, 436 Pa. at 242 n.2, 259 A.2d at 872 n.2.

[3] As we have earlier recorded, the Presbytery of Beaver-Butler, the judicatory next superior to the session of Middlesex United in the UPCUSA hierarchy of judicatories, and vested with power to take effectual care of the sessions under its charge, appointed an Administrative Commission to supercede the refractory Middlesex United session. The Administrative Commission demanded possession and control of the church property and was rebuffed. These actions constituted a decision by Beaver-Butler Presbytery, the highest judicatory of UPCUSA to which this matter was presented. As we have demonstrated, the law of Pennsylvania, both of the cases and by statute, is that the civil court was bound to accept the Presbytery's decision as

final and binding. It follows that the common pleas court erred in entering judgment in favor of the local church; and that its judgment must be reversed.

III. Constitutional Considerations

As we have observed, federal jurisdiction in *Watson v. Jones, supra*, was founded on diversity of citizenship. It may be assumed that the United States Supreme Court in adopting the deference principle chose a principle which it found to be in conformity with the establishment and free exercise clauses of the First Amendment.

After 1868, when the Fourteenth Amendment made the First Amendment applicable to the states, federal courts employed the deference principle of *Watson v. Jones, supra*, although that case was decided without explicit reference to the free exercise or establishment clauses.

Barkley v. Hayes, 208 F. 319 (D. Mo. 1913), *aff'd sub nom. Duvall v. Synod of Kansas*, 222 F. 699 (8th Cir. 1915), *aff'd sub nom. Shepard v. Barkley*, 247 U.S. 1, 38 S.Ct. 422, 62 L.Ed. 939 (1918) was litigation over property between UPCUSA's predecessor, the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church in which the former claimed the right to possession and control of Cumberland's properties. The district court decided that the union of the two bodies had been regularly effected and that the ownership of the properties passed to the Presbyterian Church in the United States of America. The Supreme Court affirmed the circuit court declaring that "without any difference on the subject the court is of the opinion that the doctrines by which the case is controlled have been so affirmatively and conclusively

settled by a prior decision of this court as to cause it to be unnecessary as a matter of original consideration, to restate them. *Watson v. Jones*, 13 Wall. 679, 20 L.Ed. 666. And the want of any possible reason for removing this case from the control of the doctrines of the Watson Case is, if needs be, conclusively shown by the many cases cited by the court below . . . in which the Watson Case was made controlling and decisive as to controversies not in substance differing from this one." 247 U.S. at 1, 38 S.Ct. at 422.

In *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94, 73 S.Ct. 143, 97 L.Ed. 120 (1952), American churches affiliated with the Russian Orthodox Church sued to recover possession of the New York Cathedral. The Supreme Court reversed decision of the New York Court of Appeals to the effect that the plaintiffs were not entitled to judgment by virtue of a New York statute undertaking to transfer control of the local churches from the control of the governing hierarchy located in Russia, because the statute violated the free exercise clause. On the authority of *Watson v. Jones, supra*, the Supreme Court held that the controversy concerning who had the right to use St. Nicholas Cathedral was a matter of ecclesiastical government with the result that the courts were bound to accept the decision of the Supreme Church Authority of the Russian Orthodox Church. Mr. Justice Frankfurter in a concurring opinion wrote:

> The judiciary has heeded, naturally enough, the menace to a society like ours of attempting to settle such religious struggles by state action. And so, when courts are called upon to adjudicate disputes which, though generated by conflicts of faith, may fairly be isolated as controversies over property

> and therefore within judicial competence, the authority of courts is in strict subordination to the ecclesiastical law of a particular church prior to schism. *Watson v. Jones*, 13 Wall. 679, 20 L.Ed. 666. This very limited right of resort to courts for determination of claims, civil in nature, between rival parties among the communicants of a religious faction is merely one aspect of the duty of courts to enforce the rights of members in an association, temporal or religious, according to the laws of that association . . . .

Id. at 122, 73 S.Ct. at 157.

In *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969), the facts and issues were again materially identical to those of this case. The state court applied what was described to be the law of Georgia to the effect that there was an implied trust of local church property for the benefit of the several churches on condition that the latter adhere to its tenets and practices at the time of affiliation. A jury was asked to hear and decide whether the general church had or had not departed from the true doctrine of the faith. The jury found for the local churches and the judgment thereon was affirmed by the Georgia Supreme Court. The United States Supreme Court reversed and remanded, holding on the authority of *Watson v. Jones, supra*, that civil courts have no role in determining ecclesiastical questions. Mr. Justice Brennan for the court wrote:

> Thus, the First Amendment severely circumscribes the role that civil courts may pay in resolving church property disputes . . . Civil courts do

> not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are neutral principles of law, developed for use in all property disputes, which, can be applied without "establishing" to which property is awarded.

Id. at 449, 89 S.Ct. at 606.

In recent cases the catchy phrase "neutral principles" has been attached to an approach to church disputes different from the deference principle of *Watson v. Jones, supra*, and *Watson's* Pennsylvania precursor, *McGinnis v. Watson, supra*. In *Maryland & Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 90 S.Ct. 499, 24 L.Ed.2d 582 (1970), the Supreme Court of the United States dismissed the appeal of a denomination from a decision of the Maryland courts in favor of the local church decided by the Maryland courts, not on the deference principle, but on neutral principles, consisting of an examination of state statutory law, language in deeds, and terms of the church constitutions. The Supreme Court of the United States, per curiam, held that since the Maryland court had in fact resolved the dispute without inquiry into religious doctrines there was no violation of the First Amendment. Mr. Justice Brennan in a concurring opinion expressed the view that states may adopt any one of various approaches to resolve church property disputes so long as there is no inquiry into religious law or usage. He described as proper means the deference principle; neutral principles; or as a possibility, the passage of special statutes governing church property arrangements.

We come finally to *Jones v. Wolf*, 443 U.S. 595, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979). Here the issue was that of whether

a civil court might use the neutral principles approach to resolve church property disputes involving a hierarchical denomination or whether the use of the deference principle was required in the case of a hierarchical denomination. The Court decided by a vote of five to four that the neutral principles approach may be employed so long as the court's considerations do not include matters of doctrine or usage. The difference between the majority and dissenters was not over the propriety of the use of the deference principle; it was over whether the neutral principles approach might be used as well as the deference principle in the case of a hierarchical denomination.

IV. The Decision of the Court of Common Pleas

The chancellor filed an inadequate memorandum opinion and decree nisi granting Middlesex Presbyterian's motion for summary judgment; the court en banc dismissed UPCUSA's exceptions and entered the decree nisi as a final order.

The chancellor acknowledged that the deference principle applied to disputes between local churches and hierarchical denominations and that UPCUSA is a hierarchical denomination. Having so concluded, the chancellor should have, as the deference principle requires, accepted as binding the decision of the highest tribunal of UPCUSA to decide the matter, the Presbytery of Beaver-Butler. Instead, the chancellor declared that "the single issue on which this litigation turns is whether UPCUSA's concededly hierarchical form of organization with respect to doctrine and belief extends to property matters." The chancellor then turned to *Jones v. Wolf, supra*, and described that case as authorizing the use of neutral principles. The chancellor also wrote that "[u]nder either the deference rule or neutral principles of law approach, a trust can be enforced only if the internal laws

of the denomination create one" and referred to two decided cases, one an appellate court decision from California and the other a trial court decision from Maryland, as persuasive. California and Maryland employ the neutral principles approach. The chancellor then concluded "[a]fter a thorough examination of the relevant statutes, property deeds, and UPCUSA Constitution, it cannot be said such a trust [to UPCUSA] was ever created."

Thus, without citation of Pennsylvania cases or the Act of 1935, the chancellor declined to defer to the decision of the Presbytery and decided the issue based on his examination of the deeds and UPCUSA's Constitution. As we have demonstrated, Pennsylvania adheres to the deference principle which, applied in this case, plainly requires acceptance of the decision of the Presbytery.

V. The Application of Neutral Principles to This Case

[4] As we have seen, the neutral principles approach is that of examination of the relevant statutes, title deeds, and church constitutions for evidence of the creation of a trust of local church property for the benefit of the denomination.

[5] The Act of 1935 provides that the control of local congregations over property is subject to the regulations and requirements of the denomination of which it is a part. *Church of God v. Church of God, supra.* Thus, Pennsylvania has anticipated Mr. Justice Brennan's suggestion in *Maryland & Virginia Eldership of the Churches of God at Sharpsburg, Inc., supra*, as a possibility, of the passage of special statutes governing church property arrangements. In any event neutral principles include consideration of the applicable statutes and the applicable Pennsylvania statute requires that the Presbytery decision be upheld.

The title deeds to Middlesex Presbyterian Church contain no trust language.

[6, 7] The charter of the nonprofit corporation attached to Middlesex United Presbyterian Church declares that the purpose of the corporation was to "worship Almighty God according to the faith, doctrine, creed, discipline and usages of the Presbyterian Church of the U.S.A." We learn that the Form of Government of the Presbyterian Church of the U.S.A. was the same as that of UPCUSA. What does that Form of Government provide concerning the property of local or particular church property?[3] In the case of a formal dissolution or extinction of a particular church, its properties shall be held, used and applied to such uses as the presbytery should direct or sold by the presbytery. Form of Government Section 62.11. The particular church may not sell, mortgage, encumber, or lease real property without permission of the presbytery. Form of Government Section 62.12. The Presbytery, after an investigation and an opportunity to be

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3. We record that the constitution of UPCUSA at the time of the events of this case did not explicitly provide that upon the secession of the congregation, the local church property remains with the UPCUSA; but that it has since been amended to so provide. This point and the fact that amendments of UPCUSA's constitution to the same effect had been proposed and defeated in the past are advanced by the appellees as strong evidence, presumably to be employed with other neutral principles, that the constitution should be construed as providing that UPCUSA has no right to retain the property. We do not agree that these circumstances should have that effect. As we note later in the body of the opinion, there were other limitations on the local churches' use and control of the property imposed by UPCUSA's constitution which did forbid, and have been construed by the Court of Appeals of Maryland under neutral principles as having forbidden, the alienation of its property by a withdrawing local church. The fact that the constitution was amended so as to make it explicit that local churches might not retain church property after withdrawing from UPCUSA, does not compel the conclusion that other provisions did not already so provide.

heard is given to the particular church's session, may determine that the session of the particular church is unable or unwilling to manage wisely the affairs of its church and appoint an Administrative Commission to take charge of the particular church with full power of a session. Form of Government Section 41.15. Every session has "exclusive authority over the uses to which the church buildings and properties may be put" and to delegate this responsibility to the trustees of the adjunct nonprofit corporation subject to the "superior authority and direction of the session." Form of Government Sections 41.07-08. Finally, trustees, the name given the officers of the nonprofit corporation holding title to local church property "shall deal with such property only as they may be authorized or directed by the session." Form of Government Section 62.08. In our view, these provisions are at least sufficient to support a conclusion that local church property cannot be alienated from the denomination by the congregation without permission of the Presbytery and this was what was done in this case.

The State of Maryland adheres to the neutral principles approach and, it will be recalled, the chancellor cited a Maryland trial court decision as persuasive that no trust for UPCUSA existed in the circumstances of this case. *Babcock Memorial Presbyterian Church v. The Presbytery of Baltimore of the United Presbyterian Church in the United States*, 296 Md. 573, 464 A.2d 1008 (1983) is the final judgment in the case cited by the chancellor. The Maryland Court of Appeals there decided the appeal of the local church from a decision of the intermediate appellate court, the Court of Special Appeals, reversing the trial court's decision that UPCUSA had a congregational polity with respect to use of local church property so that the seceding congregation of the local church could lawfully give the church property to another congregation. The Court of Appeals, applying neutral principles,

concluded that the intermediate appellate court had correctly decided that there was a trust in the property for the uses of UPCUSA based on Sections 62.08, 62.11, 62.12 of UPCUSA's Form of Government and the provisions of the by-laws of the local church acknowledging its allegiance to UPCUSA. We find no important difference in the circumstances in *Babcock* and those in this case, except that in this case there is the Act of 1935 which further supports, if it does not make conclusive, the thesis that even under neutral principles the judgment here should have been for UPCUSA.

For these reasons we are constrained to enter the following:

ORDER

AND NOW, this l0th day of February, 1984, the final decree of the Court of Common Pleas of Butler County made June 21, 1982 is reversed; and the record is remanded with direction that summary judgment be entered in favor of the appellants herein and against the appellees and that appropriate injunctive relief be granted the appellants upon their application. Such relief shall include an order that the appellees shall deliver to the Administrative Commission appointed by the Presbytery of Beaver-Butler of the United Presbyterian Church in the United States of America all assets, funds and property, real and personal, of the Middlesex United Presbyterian Church.

MacPHAIL, J., did not participate in this decision.

OPINION OF THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

EQUITY DIVISION

Eq. No. 81-024

Book 23 Page 241

Decided: April 26, 1982

THE PRESBYTERY OF BEAVER-BUTLER OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, an unincorporated Association, et al

Vs.

MIDDLESEX PRESBYTERIAN CHURCH, an unincorporated ecclesiastical congregation, et al

MEMORANDUM OPINION AND DECREE NISI

Dillon, P.J.

The primary defendant in this case, The Middlesex Presbyterian Church ("Middlesex") is a nonprofit corporation organized under Pennsylvania law and has been affiliated with the United Presbyterian Church in the United States of America ("UPCUSA"), the parent of the primary plaintiff, The Beaver-Butler Presbytery ("Presbytery"), and its predecessors since the church's inception in 1799. UPCUSA's form of organization is hierarchical in nature. Judicial and administrative powers under

its plan of organization are vested in four bodies; listed in ascending order of their superiority these bodies are: Sessions, Presbyteries, Synods and General Assembly. The Session being the local body, its immediate superior is the Presbytery. Pursuant to a vote of the Middlesex members on April 6, 1981, the majority of those present voted to sever all relations with the Presbytery and UPCUSA and form the Middlesex Presbyterian Church. This case is a dispute over the property allegedly owned by Middlesex when it disaffiliated from UPCUSA. That property includes three tracts of land on which are the church building, parsonage residence and cemetery, and personal property in the form of church records, furniture and furnishings, and the church's operating capital. Plaintiffs and defendants have filed crossmotions for summary judgment. A hearing on the motions was held March 16, 1982.

DISCUSSION

This Court is mindful of the judicial theories ruling this case. Civil courts have historically been forbidden, under First Amendment principles, from resolving church disputes on questions of an ecclesiastical nature. The State does, however, have a legitimate interest in providing a civil forum for the conclusive determination of church property disputes, and may do so under any method so long as it does not require a determination as to church doctrine or religious practice. *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1872), first enunciated a broad doctrine of judicial deference to the internal decisionmaking processes of a church denomination, based upon the denomination's established system of government. The ultimate issue to be decided under the deference rule is whether the form of church government is congregational or hierarchical. In the congregational form, church authority and control over property

is reposed in the local congregation and its elected leaders, while in the hierarchical form, the local church is an integral and subordinate part of the general church and subject to its authority. The Supreme Court later, in *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969), set forth a "neutral principle of law" approach permitting neutral examinations of deeds to church property, state statutes, and existing local and general church constitutions to determine the ultimate rights of ownership and control of property.

Plaintiff's contention in the case at bar is that UPCUSA is a hierarchical denomination, and as such, all of the property owned by defendant Middlesex during its affiliation with UPCUSA, was implicitly held in trust for UPCUSA. In support of its contention, plaintiff points to principles of Pennsylvania statutory and case law which uphold a trust interest in affiliates' property when the internal law of the denomination mandates. Defendant concedes that UPCUSA is a hierarchical denomination with respect to doctrine and belief, but argues that its internal law neither expressly nor implicitly gives the denomination a trust interest in affiliates' property. The case turns on the resolution of that issue under either of the abovementioned theories. The Court, after a careful examination of the pleadings, depositions, answers to interrogatories, admissions and affidavits on file, FINDS:

FINDINGS OF FACTS

1. The Middlesex Presbyterian Church has been affiliated with the United Presbyterian Church in the United States of America and its predecessors since the Church's inception in 1799.

2. Pursuant to a vote of 125-31 on April 6, 1981, the members of Middlesex duly amended its charter to disaffiliate from UPCUSA, effective April 19, 1981.

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3. Pennsylvania statutory and case law treat religious denominations and their affiliates like any other voluntary organization; thus they have only such rights as are granted to them by the denomination's internal law.

4. The Constitution of UPCUSA consists of two parts: The Book of Confessions and The Book of Order which contains the Directory for Worship, the Form of Government, and the Book of Church Discipline. (Affidavit of Rev. J. Clyde Henry, D.D. at 4.)

5. The UPCUSA Constitution is the supreme law of the denomination. The statements of General Assemblies are not the law of the Church. Only when an amendment is adopted do resolutions, reports, etc., have the force and effect of law.

6. The history of the UPCUSA Book of Order reflects that in 1979, an amendment was proposed which would have created a trust in favor of UPCUSA with respect to property owned by affiliated churches. That amendment was not ratified and never became part of the UPCUSA Constitution until May 23, 1981, after Middlesex voted to disaffiliate. (Affidavit of Rev. J. Clyde Henry, D.D. at 15; Exhibits C & D to Third Affidavit of defendant's in support of their motion for summary judgment).

7. The Constitution does not prohibit a congregation from disaffiliating, and until May, 1981, did not create a trust, explicit or implicit, in affiliates' property in favor of UPCUSA.

8. The real estate in controversy consists of three parcels of ground in Middlesex Township, Butler County, as follows:

(a) Ejectment proceedings at No. 4, January Term, 1926, Book 4, Page 149 in case of Kerns v. Trustees of the Middlesex Congregation, by jury verdict of October 3, 1825, established title to the original five acre tract.

(b) Deed from Thomas L. Lyon, et. al, to Middlesex Presbyterian Church covering 2-1/2 acres dated May 12, 1948, Deed Book 572, Page 482, and a correction deed recorded in Deed Book 794, Page 386, said parcel to be known as "The Lyon Memorial Park" and to be used for such church purposes as the congregation sees fit, recorded August 21, 1963.

(c) Deed dated September 10, 1948, from Stephen G. Hamilton et. al., to Middlesex Presbyterian Church covering five acres recorded in Deed Book 582, Page 541.

9. Record title to all of the real and personal property in dispute in this case has been exclusively in Middlesex at all relevant times. There is no evidence that Middlesex ever explicitly agreed to hold its property in trust for UPCUSA.

CONCLUSIONS OF LAW

As stated above, the single issue on which this litigation turns is whether UPCUSA's concededly hierarchical form of organization with respect to doctrine and belief extends to property matters. The parties' cross motions for summary judgment are presently before the Court, and Rule 1035(b) of the *Pennsylvania Rules of Civil Procedure* states the grounds upon which summary

judgment may be granted. The judgment sought shall be rendered only if:

> "The pleadings, depositions, answers to interrogatories . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

The critical question is whether there is any genuine issue as to the impression of a trust upon affiliates' property in the UPCUSA Constitution. This Court finds no such trust existed prior to May, 1981, after Middlesex' disaffiliation.

Plaintiff places much emphasis in its brief on the various interpretations by the General Assembly of UPCUSA law. (Plaintiff's brief at 16-21). However, this Court has found statements by the General Assembly are not the law of UPCUSA,; only its Constitution embodies the law. Three cases cited by defendant strongly support this Court's conclusion. The Supreme Court in *Jones v. Wolf*, 241 Ga. 208, 243 S.E. 2d 860, *Vacated in part for reconsideration*, 443 U.S. 595, *Reaffirmed*, 244 Ga. 388, 260 S.E. 2d 84 (1979), *cert. denied*, 444 U.S. 1080 (1980), compared the relevant sections of the Book of Order of UPCUSA with the Book of Order of the Presbyterian Church in the United States ("PCUS") and specifically found that PCUS's Book of Order "fails to give rise to an express trust or any implied trust" in church property in favor of the denomination. UPCUSA officials admit that the "Polities of the two (denominations) are . . . similar." (Minutes of the General Assembly of UPCUSA, defendants' third affidavit at 24, Exhibit M.)

Although not binding on this Court, two foreign cases virtually identical factually with the one at bar are persuasive.

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The California Court of Appeals, examining UPCUSA's Book of Order, remarked:.

> "Unlike some other religious denominations having a hierarchical structure, there is no requirement by UPCUSA that title to local church property be vested in the general church. On the contrary, it is specifically provided that title to and administration of local church properties be vested in the local church trustees or corporation." *Presbytery of Riverside v. Community Church of Palm Springs*, 89 Cal. App. 3d 910, 919-25, 152 Cal. Rptr. 854, 859-63, *Cert. denied*, 444 U.S. 974 (1979).

In *Merritt Boulevard Presbyterian Church of Dundalk, Inc. v. Presbytery of Baltimore*, No. 106725 (Cir. Ct. Baltimore City, Md., Nov. 17, 1981), the Court granted summary judgment for the disaffiliating church, finding no lan[illegible]ge in the relevant deeds or church charter granting a trust to UPCUSA, and finding a mere statement in the Charter that the church was affiliated with UPCUSA did not create such a trust.

Under either the deference rule or neutral principles of law approach to this problem, a trust will be enforced only if the internal laws of the denomination create one. After a thorough examination of the relevant statutes, property deeds, and UPCUSA Constitution, it cannot be said such a trust was ever created. Hence the following Decree.

DECREE NISI OF THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

EQUITY DIVISION

Eq. No. 81-024

Book 23 Page 241

THE PRESBYTERY OF BEAVER-BUTLER OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, an unincorporated Association, et al

Vs.

MIDDLESEX PRESBYTERIAN CHURCH, an unincorporated ecclesiastical congregation, et al

DECREE NISI

AND NOW, this 26th day of April, 1982, after hearing and in conformance with the foregoing Memorandum Opinion, it is ORDERED that Plaintiff's Motion for Summary Judgment be, and hereby is, dismissed, and that defendant's Motion for Summary Judgment be, and hereby is, granted.

Further proceedings are governed by Rules of Civil Procedure 1518 and 1519.

Copies of this Memorandum Opinion and Decree Nisi are to be sent to Attorney Lee C. McCandless and Attorneys Roger

Decree

C. Wiegand, Kenneth C. Kettering and James A. Taylor, counsel for the respective parties.

BY THE COURT,

/s/ John C. Dillon
JOHN C. DILLON
President Judge

April 27, 1982, Copies mailed to Kenneth C. Kettering, Esq. and Roger C. Wiegand, Esq.

FINAL DECREE OF THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

EQUITY DIVISION

Equity No. 81-024

Book 23 Page 241

THE PRESBYTERY OF BEAVER-BUTLER OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, an unincorporated Association, et al

Vs.

MIDDLESEX PRESBYTERIAN CHURCH, an unincorporated ecclesiastical congregation, et al

FINAL DECREE

AND NOW, this 2lst day of June, 1982, after oral argument before the Court en banc, and after consideration of the parties, briefs in support of and in opposition to plaintiff's exceptions, IT IS ORDERED that the Court's Decree Nisi entered April 26, 1982 be, and hereby is, made final. The Court's Memorandum Opinion entered that date is hereby affirmed in its entirety with the following corrections:

1. Line #l of P. 5 should read " . . . .the UPCUSA reflects that in *1929* . . ." rather than 1979.

Final Decree

2. Line #13 of P. 5 should read "Ejectment proceedings at No. 4, January Term, *1826* . . ." rather than 1926.

The Prothonotary is directed to enter judgment, to-wit, in favor of defendant Middlesex Presbyterian Church and against plaintiff Presbytery of Beaver-Butler.

Copies of this Final Decree are to be sent to Attorney Lee C. McCandless and Attorneys Roger C. Wiegand, Kenneth C. Kettering and James A. Taylor, counsel for the respective parties.

BY THE COURT,

/s/ John C. Dillon
President Judge

/s/ Floyd A. Rauschenberger, J.
Judge

June 22, 1982, Copies to Kenneth C. Kettering, Esq. and Roger C. Wiegand, Esq. by U.S. Mail. June 22, 1982, Judgment entered at C.P. No. 82-1058, Book 18 , Page 214 as per above Order of Court.

JUDGMENT OF THE SUPREME COURT OF PENNSYLVANIA

SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

No. 36 W.D. Appeal Dkt. 1984

Appeal from the Order of the Commonwealth Court dated February 10, 1984, No. 1740 C.D. 1982, Reversing the Order of the Court of Common Pleas of Butler County, No. 81-024

80 Pa. Cmwlth, Ct. 211, 471 A.2d 1271 (1984)

ARGUED: SEPTEMBER 13, 1984

ENTERED: APRIL 3, 1985

THE PRESBYTERY OF BEAVER-BUTLER OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, ET AL.,

Appellees

v.

MIDDLESEX PRESBYTERIAN CHURCH, et al.,

Appellant

JUDGMENT

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the COMMONWEALTH COURT OF PENNSYLVANIA be, and the same is, hereby REVERSED AND FINAL DECREE OF THE

Judgment

COURT OF COMMON PLEAS OF BUTLER COUNTY IS REINSTATED.

/s/ Carl Rice
Carl Rice, Esquire
Prothonotary

Supreme Court, U.S.
FILED
JUL 25 1985
ALEXANDER L. STEVAS
CLERK

No. 85-10

IN THE

Supreme Court of the United States

October Term, 1985

THE PRESBYTERY OF BEAVER-BUTLER OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, *et al.*,
Petitioners,

v.

MIDDLESEX PRESBYTERIAN CHURCH, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

RESPONDENTS' BRIEF IN OPPOSITION

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BEST AVAILABLE COPY

QUESTIONS PRESENTED

1. Does this Court have jurisdiction to grant certiorari in this case, where (a) no federal question was raised by the petitioners before the Pennsylvania Supreme Court and (b) no substantial federal question is raised by the Petition?

2. Did the Pennsylvania Supreme Court violate the Religion Clauses of the First Amendment (as incorporated into the Fourteenth Amendment) when it decided this church property dispute in accordance with the internal laws of the denomination in question—thereby applying the "neutral principles of law" doctrine endorsed by, *e.g.*, *Jones v. Wolf*, 443 U.S. 595 (1979)?

PARTIES TO THE PROCEEDING

The Petition erroneously states that respondent Middlesex Presbyterian Church ("Middlesex") is an "unincorporated religious congregation." (Pet. ii). To the contrary, as stated in the opinion of the Pennsylvania Supreme Court, Middlesex is a Pennsylvania non-profit corporation which was incorporated in 1907. (Pet. 2a). Moreover, the Petition purports to name Middlesex as a petitioner, but the directors and officers of Middlesex have not authorized (and, indeed, oppose) the Petition. (Pet. ii).

Middlesex, the only corporation among the respondents, is a member of the Presbyterian Church in America, a nationwide religious denomination.

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RESPONDENTS' BRIEF IN OPPOSITION

JURISDICTION

We respectfully submit that this Court has no jurisdiction to grant the Petition for two reasons. First, petitioners failed to raise their purported federal question before the Pennsylvania Supreme Court. Second, the Petition fails to raise a substantial federal question. Our argument is presented below under "Reasons for Denying the Writ."

ADDITIONAL STATUTORY PROVISION INVOLVED

Pennsylvania Rule of Appellate Procedure 2116(a) (1984) is set forth in the Appendix hereto.

STATEMENT OF THE CASE

This is a dispute over the ownership of church property. The principal respondent, defendant below, is Middlesex Presbyterian Church ("Middlesex"), a Pennsylvania non-profit corporation. Middlesex was formerly a member of The United Presbyterian Church in the United States of America ("UPCUSA"), a nationwide religious association. Middlesex quit its membership in UPCUSA on April 19, 1981. The principal petitioner, plaintiff below, is The Presbytery of Beaver-Butler of the United Presbyterian Church in the United States of America (the "Presbytery"), a subordinate organ of UPCUSA. Plaintiffs seek to strip Middlesex of all of the property owned by Middlesex when it left UPCUSA. Plaintiffs sought an injunction awarding them that property, an accounting and related relief.

From its incorporation in 1907, Middlesex was a member of the Presbyterian Church in the United States in America, the predecessor by merger of UPCUSA. Middlesex remained a member of UPCUSA until 1981. Mid-

dlesex left UPCUSA by appropriately amending its articles of incorporation effective April 19, 1981. The amendment was duly authorized by the members of Middlesex at a special meeting on April 6, 1981 by a vote of 125 to 31. The amended articles of incorporation were reaffirmed by an unanimous vote on October 18, 1981. Petitioners do not contend that these actions were invalid as a matter of corporate law or that any member of Middlesex was ever expelled or denied the opportunity to vote.

Middlesex briefly operated as an independent church after it left UPCUSA. Attendance at its services did not materially change, and most of the few active members who had voted against the charter amendment continued to attend. On October 18, 1981, the members of Middlesex unanimously authorized Middlesex to join the Presbyterian Church in America (the "PCA"), another nationwide religious association. Middlesex was received into the PCA on November 14, 1981.

Meanwhile, the Presbytery refused to recognize Middlesex's power to end its membership in UPCUSA, and on April 27, 1981, after Middlesex had left UPCUSA, the Presbytery appointed an "Administrative Commission" to which it purported to give power to administer Middlesex's property.

Middlesex is a small church located in a rural area. Its only property is its church building, minister's residence and cemetery, plus books of worship, church records, furniture and about $12,500 in operating funds. All of this property was acquired solely out of Middlesex's own funds and contributions by its members. Title to all of this property is solely and unrestrictedly in Middlesex. Neither Middlesex nor any of its predecessors in title ever executed any deed of trust in favor of UPCUSA or

the Presbytery. Neither Middlesex nor its predecessors in title ever expressly agreed to hold its property in trust for, or granted any other property interest to, UPCUSA, the Presbytery or any other entity.

Because Middlesex never expressly granted UPCUSA any rights in its property, the Presbytery's claim to that property rests on the internal laws of UPCUSA at the time Middlesex left. Examining these internal laws, the Pennsylvania Supreme Court concluded that they created no such trust in favor of UPCUSA or its organs. "[I]t was undisputed that there was never any express trust language in the [UPCUSA] constitution during the entire period Middlesex remained affiliated with the denomination. In fact, a prior attempt by the predecessor denomination, circa 1929, to include express trust language in the constitution was defeated by the member churches." (Pet. 17a). Only in May 1981, after Middlesex had left UPCUSA, was UPCUSA's Constitution amended to add such trust language. (Pet. 14a). Accordingly, the Pennsylvania Supreme Court concluded that the plaintiffs had failed to establish "the clear unequivocal evidence necessary to support a conclusion that a trust existed." (Pet. 17a).

REASONS FOR DENYING THE WRIT

A. This Court does not have jurisdiction because the petitioners' constitutional argument was neither raised before nor considered by the Pennsylvania Supreme Court.

Jurisdiction does not lie in this Court under 12 U.S.C. § 1257 (1982) unless a federal question has been properly raised in the state courts. When "the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary." *Webb v. Webb*, 451 U.S. 493, 495 (1981), *quoting Street v. New York*, 394 U.S. 576, 582 (1969). To be preserved, federal questions must be raised at each stage of the state appellate process to the extent required by state procedural rules. *Beck v. Washington*, 369 U.S. 541, 549-54 (1962). Pennsylvania appellate practice requires issues to be raised with specificity in the briefs to be preserved. Pennsylvania Rule of Appellate Procedure 2116(a) (1984); *Commonwealth v. Lobiondo*, 501 Pa. 599, 607 n.6, 462 A.2d 662, 666 n.6 (1983).

The Pennsylvania Supreme Court's opinion in the case at bar does not rule upon, or even mention, the petitioners' present constitutional argument. (Pet. 1a-17a). That is because the petitioners never made that argument to that Court. Nowhere in their forty-eight page brief on appeal in that Court was that argument raised. Indeed, the "Table of Authorities" in that brief did not even mention the First and Fourteenth Amendments.

This Court's Rule 21.1(h) requires petitioners to specify the manner in which federal questions were raised at each stage of the proceedings below. The only

such specification in the Petition, Pet. 7 n.2, alludes to the fact that we, the respondents herein, contended before the Pennsylvania Supreme Court that judgment in our favor is compelled by the Religion Clauses of the First Amendment, as well as by state law. The Pennsylvania Supreme Court did not find it necessary to address our constitutional contention, basing its decision solely on state law. Petitioners' opposition to our contention that the First Amendment compels judgment in *our* favor is in no way equivalent to the different argument they now raise—that the First Amendment compels judgment in *their* favor. A single clause of a single sentence of their brief suggested vaguely that there is "constitutional protection afforded hierarchical religious denominations," Pet. 7 n.2, but that was hardly adequate to raise the elaborate constitutional argument petitioners now urge. Accordingly, this Court is without jurisdiction to grant certiorari to hear that argument.

B. The Petition does not present a substantial federal question.

The Pennsylvania Supreme Court here expressly followed the "neutral principles of law" doctrine endorsed by *Jones v. Wolf*, 443 U.S. 595 (1979), this Court's most recent church property case, and by *Maryland & Virginia Eldership v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367 (1970) *(per curiam)*, an earlier church property case relied upon by *Wolf*. In *Sharpsburg*, this Court dismissed for want of a substantial federal question an appeal in a case similar to this:

> In resolving a church property dispute between appellants, representing the General Eldership, and appellees, two secessionist congregations, the Maryland Court of Appeals relied upon provisions of state statutory law governing the holding of property by

> religious corporations, upon language in the deeds conveying the properties in question to the local church corporations, upon the terms of the charters of the corporations, and upon provisions in the constitution of the General Eldership pertinent to the ownership and control of church property. 254 Md. 162, 254 A.2d 162 (1969). Appellants argue primarily that the statute, as applied, deprived the General Eldership of property in violation of the First Amendment. Since, however, the Maryland court's resolution of the dispute involved no inquiry into religious doctrine, appellees' motion to dismiss is granted, and the appeal is dismissed for want of a substantial federal question.

396 U.S. at 367-68 (footnotes omitted). The Pennsylvania Supreme Court in the case at bar and the Maryland Court of Appeals in *Sharpsburg* reached their similar results by examining precisely the same kind of evidence and without inquiring into religious doctrine. (Pet. 12a-17a). Accordingly, the Petition does not present a substantial federal question.

C. Many courts have recently ruled identically to the Pennsylvania Supreme Court in cases precisely identical to this, and this Court recently ruled identically to the Pennsylvania Supreme Court in a case substantially identical to this.

Eight appellate courts around the country have recently been faced with precisely the same facts and issues involved in this case.[1] Each case involved a member church that left UPCUSA at substantially the same time

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1. In addition to the case at bar and the cases cited in the following paragraph of text, see *Foss v. Dykstra*, 342 N.W.2d 220 (S.D. 1983); *York v. First Presbyterian Church of Anna*, 130 Ill.App.3d 611, 474 N.E.2d 716 (1984), *petition for leave to appeal denied*, No. 63128 (Ill. 1985);

as did Middlesex. Each case involved the same written constitution of UPCUSA involved here.

With one exception the courts rejected the same arguments raised here and held that UPCUSA had no right to property owned by ex-member churches. The highest courts of Missouri, New York, Pennsylvania and South Dakota and the intermediate appellate courts of California, Illinois and Ohio each so held in a unanimous decision. The sole exception—an Iowa decision by a divided court—was based on a lower court decision in New York that was later reversed by the highest court of New York. Moreover, in three of those cases this Court refused to grant a petition for certiorari raising precisely the same arguments raised by the present Petition: *Presbytery of Elijah Parish Lovejoy v. Jaeggi*, 682 S.W.2d 465 (Mo. 1984), *cert. denied*, 105 S.Ct. 2361 (1985); *First Presbyterian Church of Schenectady v. UPCUSA*, 62 N.Y.2d 110, 464 N.E.2d 454, 476 N.Y.S.2d 86, *cert. denied*, 105 S.Ct. 514 (1984); and *Presbytery of Riverside v. Community Church of Palm Springs*, 89 Cal.App.3d 910, 152 Cal.Rptr. 854, *cert. denied*, 444 U.S. 974 (1979).

Furthermore, this Court recently reached the same conclusion on virtually identical facts in *Jones v. Wolf*, 443 U.S. 595 (1979). *Wolf* upheld against an identical constitutional challenge a Georgia decision that a Presbyterian denomination had no right to the property of an ex-member church, based on the internal laws of that

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Christensen v. Roumfort, No. 83-CA-124 (Ohio App., Aug. 29, 1984), *appeal dismissed*, No. 84-1636 (Jan. 4, 1985). *Contra, Fonken Community Church of Kamrar*, 339 N.W.2d 810 (Iowa 1983). Petitioners also cite *Babcock Memorial Presbyterian Church v. Presbytery of Baltimore*, 296 Md. 573, 464 A.2d 1008 (1983), *cert. denied*, 104 S.Ct. 1287 (1984), but that case was quite different and was correctly decided on its facts: it involved a member congregation of UPCUSA that made a gift of its property in violation of church law.

denomination in force at the time.[2] The only factual difference between *Wolf* and the case at bar is that *Wolf* involved the Presbyterian Church in the United States (the "PCUS"), a denomination which then was separate from UPCUSA, but which shortly thereafter merged with UPCUSA. However, that difference is immaterial, for at the time Middlesex left UPCUSA the internal laws of the PCUS applicable to termination of membership by congregations, as construed in *Wolf*, were substantially similar to the applicable internal laws of UPCUSA. Indeed, UPCUSA officials have admitted as much.[3]

In short, the arguments made by petitioners have already received an abundance of consideration by this Court and by other courts around the country. Those arguments do not merit reconsideration.

D. The Pennsylvania Supreme Court did not violate the Religion Clauses of the First Amendment, as incorporated into the Fourteenth Amendment, when it used "neutral principles of law" to resolve a property dispute between church bodies.

The issue stated by the Petition is whether a civil court may "substitut[e] its judgment" for that of a "church judicatory" in regard to an "action of [such] church judicatory" in respect of a "local church." (Pet. i).

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2. In *Wolf* this Court vacated the Georgia decision for factual reconsideration, but the Georgia Supreme Court reaffirmed its original decision, 244 Ga. 388, 260 S.E.2d 84 (1979), and this Court denied certiorari in respect of that reaffirmance, 444 U.S. 1080 (1980).

3. *See, e.g., Foss v. Dykstra*, 342 N.W.2d 220, 224 (S.D. 1983) (expressly finding that the provisions of PCUS law examined in *Wolf* are substantially similar to the applicable provisions of UPCUSA law). An official report on *Wolf* by a committee of UPCUSA's General Assembly admitted that the laws of the two denominations were "similar," and noted that "in property matters both churches have relied upon the legal doctrine of 'implied trust'. . ."

That issue is not present in this case. Middlesex, the local church involved here, quit its membership in UPCUSA before any church organ purported to issue any relevant order to Middlesex. After it quit, UPCUSA officials had no more power to issue orders to Middlesex than they had power to issue orders to any other non-member corporation. The only issue in this case is whether the petitioners have any right to Middlesex's property.

Moreover, even if it were applicable to this case, the legal proposition urged by the Petition is self-evidently false. To say, as does the Petition, that "church judicatories" have unreviewable power to "construe" church laws on all matters, civil and spiritual, and that civil courts are bound to enforce without question the wishes of "church judicatories" in all matters, is to make church officials unchecked dictators over member churches and individual members. They could "construe" into existence any rights or powers they wished or "construe" out of existence any provisions of their written constitutions they found inconvenient.

This Court's decisions support no such proposition. To the contrary, this Court has consistently held that the internal laws of a religious association represent a contract among its members that must be respected and enforced by civil courts—just as with other voluntary associations. To the extent those internal laws give particular powers to particular bodies within the association, such as the power to adjudicate disputes, the due exercise of such powers must be enforced by the courts—just as the courts must enforce the judgment of an arbitrator on matters committed to arbitration by contract. Furthermore, civil courts may never construe purely spiritual matters, such as matters of faith or doctrine.

But officers of a religious association do not have civil powers over members—such as powers over members' property—beyond the powers given them by the contract constituted by the denomination's internal laws. *Jones v. Wolf*, 443 U.S. 595 (1979); *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976); *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969); *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1872).

This case thus involves only the construction of a written agreement—UPCUSA's Constitution. The trial court here found, and the Pennsylvania Supreme Court affirmed, that the UPCUSA Constitution is the sole law of the denomination. (Pet. 14a). The UPCUSA Constitution "d[id] not prohibit a congregation from disaffiliating" from UPCUSA and "did not create a trust, explicit or implicit, . . . in favor of UPCUSA." (Pet. 14a). In 1929, UPCUSA asked its members to ratify a proposed amendment to its Constitution that would have required each member church to hold its property in trust for UPCUSA. That proposal was voted down and never became part of the UPCUSA Constitution. (Pet. 14a). Not until May 1981, after Middlesex left UPCUSA, was UPCUSA's Constitution amended to require member churches quitting UPCUSA to forfeit their property to UPCUSA. (Pet. 14a). Construction of a written agreement is a matter primarily for the finder of fact. Given these facts, it cannot be said that the construction of UPCUSA's Constitution adopted by the Pennsylvania courts—and independently reached by appellate courts in six other states—is unreasonable.

Indeed, the result urged by Petitioners would violate the Religion Clauses. Petitioners claim a right to property they have not owned, controlled or paid for, without

warrant in church law. Before May 1981 the laws of UPCUSA were deliberately designed to let unhappy congregations leave freely and in peace. If the courts had awarded Middlesex's property to the Presbytery, that would have violated the right of Middlesex and other UPCUSA members under the Free Exercise Clause to rely upon the existing provisions of church law duly adopted by the members of UPCUSA. *See Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 721-22 (1976) ("religious freedom encompasses the 'power [of religious bodies] to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.' ") (Court's brackets). Moreover, had the Pennsylvania Supreme Court thus yielded its gavel to UPCUSA officials and deferred to their desires as to disposition of Middlesex's property, that would have been "delegating a governmental power to [a] religious institution[ ]" in violation of the Establishment Clause. *Larkin v. Grendel's Den, Inc.*, 459 U.S. 116, 123 (1982).

The decision of the Pennsylvania Supreme Court was not based on these constitutional considerations, however, but solely on state law. By employing the "neutral principles of law" doctrine endorsed by *Wolf*, the Pennsylvania courts avoided these potential constitutional problems. And, as this Court held in *Sharpsburg*, application of the "neutral principles of law" doctrine does not raise any substantial federal question.

CONCLUSION

For these reasons, the Petition for a Writ of Certiorari should be dismissed for lack of jurisdiction or, in the alternative, should be denied.

Respectfully submitted,

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APPENDIX

ADDITIONAL STATUTORY PROVISION INVOLVED

Pennsylvania Rule of Appellate Procedure 2116(a) (1984) provides:

> (a) **General rule.** The statement of the questions involved must state the question or questions in the briefest and most general terms, without names, dates, amounts or particulars of any kind. It should not ordinarily exceed 15 lines, must never exceed one page, and must always be on a separate page, without any other matter appearing thereon. This rule is to be considered in the highest degree mandatory, admitting of no exception; ordinarily no point will be considered which is not set forth in the statement of questions involved or suggested thereby. Whenever possible each question must be followed immediately by an answer stating simply whether it was affirmed, negatived, qualified or not answered by the court or government unit below. If a qualified answer was given to the question, appellant shall indicate, most briefly, the nature of the qualification, or if the question was not answered and the record shows the reason for such failure, the reason shall be stated briefly in each instance without quoting the court or government unit below.